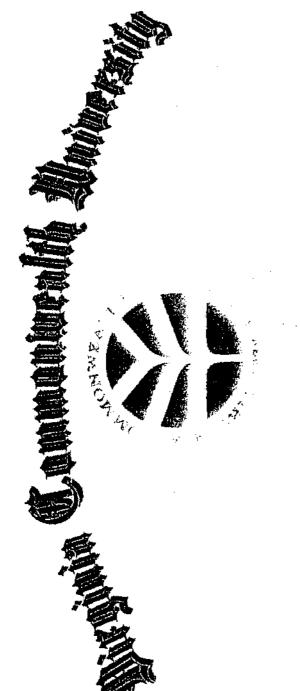
## EXHIBIT 1



# Amesch Sanusa Reendeniga

declared a graduate of the University with the degree a having fulfilled the requirements of the faculty has b

## Bachelor of Science

Given at Nichmond. Virginia, on the thirteenth day of May, 2000.

Elmol 29gm

Euse C. Fran.

## EXHIBIT 2

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD.

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEAS	E OR D	SCHARGE FROM AC	TIVE DU	ĮΤΥ	
1. NAME (Last, First, Middle) HEENDENIYA, UMESH S.		MENT, COMPONENT AND BRANCH ISMCR		FORCED	
8.a. GRADE, RAYE OR RANK 4.b PAY GRADE PPC B-2		5. DATE OF BIRTH (YYMMDD) REDACTED	6. RESERVE	OBLIG. TERM	DATE
7.3. PLACE OF ENTRY INTO ACTIVE DUTY	7.b. HOME OF RECORD AT TIME OF address if known)				
RICHMOND MEPS, VA 23240		4945 SUBURBAN AVENUE, R		VA 23230	
8.4. LAST DUTY ASSIGNMENT AND MAJOR COMMAND RI ASLT PHIB SCOL BN, MCB, CAMPEN, CA 920	JC 33808 055-5041	8.6. STATION WHERE SEPARATED $_{\rm R}$ ASLT PHIB SCOL BN, MCB	UC 33808 CAMPEN	. CA 920	55-5041
9. COMMAND TO WHICH TRANSFERRED 4TH AABN, 4TH MARDIV, NORFOLK, VA MCC-			10. SGLI CO Amount	VERAGE: \$200,000	None
13. PRIMARY SPECIALTY (List number, title and years and		12. RECORD OF SERVICE	Year(s)	Month(s)	Day(s)
specialty. List additional specialty numbers and titles invo	iving	a. Date Entered AD This Period	98	0.6	02
periods of one or more years.)		b. Separation Date This Period	98	12	19
1833- ASSAULT AMPHIBIAN VEHICLE CREV	MAN	c. Net Active Service This Period	00	06	17
		d. Total Prior Active Service	00	00	00
00 YEARS 00 MONTHS		e. Total Prior Inactive Service	00	00	10
		1. Foreign Service	00	00	00
		g. Sea Service	00	00	00
	·	h. Effective Date of Pay Grade	98	06	02
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18. REMARKS					
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4945 SUBURBAN AVENUE, RICHMOND, VA 2	3230	SAME AS BLK 19A	(A) (F		Alela wait
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21. SIGNATURE OF NATINGER BEING SEPARATED		R. A. RICKMAN, CWO2,		ALL	

DD Form 214, NGV 88 5/N 0102-LF-006-5500 Previous editions are obsolete.

MEMBER - 1

Case 5:15-cv-01238-GTS-TWD Doc	sument 21-1 Filed 03/25/1	ъ випе		
416				
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30. MEMBER REQUESTS COPY 4

Initials

29. DATES OF TIME LOST DURING THIS PERIOD

NONE.

Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 6 of 75

Case 5:15-cv-01238-GTS-TWD Document 21-1 Filed 03/25/16 Page 6 of 6 UNITED STATES MARINE CORPS



COMPANY "A" (-)
4TH ASSAULT AMPHIBIAN BATTALION
4TH MARINE DIVISION
MAYNE AND MARINE CORPS RESERVE CENTER
7490 SHORE ORIVE, SUITE 200
NORFOLK, VA 23521-3298

IN REPLY REFER TO:

1900 ADMIN 4 Apr 01

From: Commanding Officer/Inspector-Instructor, Company A(~),

4th Assault Amphibian Battalion, 4th Marine Division, FMF,

7690 Shore Drive, Ste 100, Norfolk, VA 23521-3298

To: Commandant of the Marine Corps (MMSR), Headquarters, U.S. Marine Corps, Harry Lee Hall, 17 Lejeune Road,

Quantico, VA 22134-5104

Subj: DISCHARGE OF LANCE CORPORAL UMESH S. HEENDENIYA

313 06 4095/1833 USMCR BY REASON OF PHYSICAL

DISQUALIFICATION

Ref: (a) MCO P1900.16E

tb) CO/I-I ltr 1900 Admin ltr 1900 ADMIN of 8 Mar 01

- 1. All provisions of the reference were complied with and completed on 17 Mar 01.
- 2. Lance Corporal Umesh S. Reendeniya was discharged from the Select Marine Corps Reserve on  $\underline{4}$  Apr  $\underline{01}$ .
- 3. As required by the references, the following information is provided:
  - a. Type of Separation: Administrative
  - b. Character of Service: Honorable
- c. Separation Authority: Chief, BuMed&Surg ltr 6110/252 25/REM/A0009476 of 10 Jan 01
  - d. Separation Code: JFR3

K. M. LEWTON

Copy to: CG, MARFORRES (Code 7AA) BUMED (02D)

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## EXHIBIT 3

### ISLAND COUNSELING CENTER, P.C. 108 Grove Street, 2<sup>nd</sup> Floor Worcester, MA 01605

TEL: 508-753-3220 FAX: 508-753-3224

July 6, 2012

Reference:

Umesh Heendeniya

DOB: Redaction

To Whom It May Concern:

Mr. Heendeniya has been under my psychiatric care since 10/26/07. He is diagnosed with Postraumatic Stress Disorder, Bipolar Disorder, Not Otherwise Specified, and Impulse Control Disorder. He was also diagnosed with Attention Deficit Hyperactivity Disorder in 2000 by a psychiatrist in Virginia. He endorses difficulty focusing, and attention, takes longer to complete tasks, and difficulty with multitasking. He is currently prescribed Trileptal, Xanax, Lamictal, Lexapro, Strattera, and Risperdal.

Sincerely,

Kimberly Lovett, M.D.

**Psychiatrist** 

Tampa Palms Professional Center 17407 Bridge Hill Court, Unit A Tampa, FL 33647 (813) 971-1800 (813) 971-1804 (fax)

### Marina Waisman, M.D.

October 5, 2015

Mr. Heendeniya has been under my care for the treatment of Posttraumatic Stress Disorder and Bipolar type II Disorder since 11/10/2014.

He is currently taking the following medications for the treatment of the above stated conditions:

Risperidone 1 mg once a day Trileptal 300 mg once a day Strattera 60 mg once a day Alprazolam 0.5 mg once a day Lexapro 20 mg once a day Lamietal 150 mg once a day

Sincerely,

Marina Waisman, M.D.

I'and Wanting

## EXHIBIT 4

48E:50 05 80 mr.

Mark E. dunson M.D.

100-029-7922

STILLMATER MEDICAL CENTER P.O. BOX 2408 STILLNATER, OR 74076 (405) 372-1480

OPERATIVE REPORT COPY

PATIENT NAME: HEENDENIYA, UMESH S.

ROOM #1

DATE OF SIRTE!

. SEX: M

**SSW** : redacted

BILLING #.

411719

redacted

PATIENT TYPE: 5 HISTORY:

DATE 08/24/95

PREOPERATIVE DIAGNOSIS:

Probable cartilage tear, right knee.

POSTOPERATIVE DIAGNOSIS:

Articular cartilage patellar fracture with multiple loose bodies.

NAME OF OPERATIONS

Arthroscopic shaving and debridement and loose body removal of right knee.

DESCRIPTION OF OPERATION:

SURGEON: Mark E. Munson, M.D. AMESTHESIA: Dr. Kerr, general.

ASSISTANT: None.

OPERATIVE INDICATIONS: I have explained treatment alternatives, risks and benefits to Mr. Heenderlys including both operative and nonoperative treatment. He understands possible complications of surgery which could include infection, neurovascular damage, chronic stiffness and pain, blood clots, heart attack, stroke, limb loss and death and he wishes to proceed with surgery as scheduled.

PROCEDURE NOTE: The patient was taken to the operating room and placed on the table in the supine position. Pollowing satisfactory induction of general endotraches anesthesis, the patient's right lower extremity was prepped with sterile Betadine scrub and solution and draped in the usual sterile fashion. While under anesthesis with examination under flexion and rotation he had significant crepitus in the eight bear gollowing elevation of the townique to 100 meters. the right knes. Following elevation of the tourniquet to 300 mmHg the arthroscope was introduced through the inferolateral port, probed through the inferomedial port and irrigation through the superolateral port. The interarticular contents were inspected and the medial compartment was found to be normal. The meniacus was probed and palpated and found to be stable and normal. The articular surface of the medial compartment was normal: The intercondylar notch was inspected and the cruciate ligaments were intact. The lateral compartment was inspected in the figure four position and again the meniscus was entirely normal as was the articular surface. Following this attention was turned to the suprepatellar pouch which was normal. However when looking at the under surface of the patella and the patellofemoral joint. The patient was found to have two small and one large loose body connected by synovium which were along the inferior pole of the patella and appeared to have been from an articular cartilage fracture of the medial aspect of the patella.

Continued ...

Jan 08 20 03:13p

Mark E. Hunson H.D.

405-824-7422

P. 2

PATIENT NAME: HEENDENIYA, UMESH S. PAGE 2 BILLING #: 411719 ROOM #: OP

These fragments were loose and so they were removed following which they were sent to pathology. The articular surface was smoothed with a patellar shaver and the patient had exposed bone along the medial facet of the patella suggesting a poor prognosis with possible long term stiffness or even post traumstic arthritis. The lateral surface of the patella was fairly normal. The femoral groove also showed minimal damage. No other abnormalities were identified and following shaving and debridement, the instruments were removed. The wounds were irrigated and closed with interrupted sutures of 4-0 Prolene, dressed with adaptic 4 x 4s, soft roll and an Ace bendage. The patient tolerated the procedure well. Blood loss was minimal and he was returned to the Recovery room in satisfactory condition.

Mark B. Munson, M.D.

MEM/daw Job #: DC: 08/24/95 TR: 08/24/95

cc: Dr. Hansen at 090 Mark S. Munson, N.D.

DOCTORS BUILDING . W. STH AVE SUITE WE STILLWATER, OKLA. 74074

MANO: GOGOGO82495 D.O.B.: redacted # AGE: 12 SERVIN /O: O ROCH; OH NAME: HEENDENILLS
MRNO: OGCOGO82495 D.O.B.: redacted

SPECIMEN RECEIVED: 8/23/95 PHYSICIAN MUNICIPE MARK

OPERATION:
CLINICAL DIAGNOSIS CARTILAGE TEAR A.T. RT MARK

SPECIMEN/TISSUE: LOOSS BODIES RIGHT MARKS

AND THE STATEMENT OF THE STATEMENT O

GROSS DESCRIPTION

The specimen consists

DIACNOSIS

RESECTION, OSTEOCARTILADENOUS BODIES.

HEENDENIYA, UMBSH S 958-02808

UMESH S.

### TUCKAHOE SURGERY CENTER 8919 THREE CHOPT ROAD RICHMOND, VA 23229

### OPERATIVE REPORT

NAME:

UMESH HEENDENIYA

DATE

DECEMBER 21, 1999

ACCOUNT #

313-06-4095

SURGEON:

JOEL B. GONZALES, M.D.

PRE-OP DX:

PATELLOFEMORAL DJD RIGHT KNEE

POST-OP DX:

SAME PLUS DID MEDIAL FEMORAL CONDYLE. ANTERIOR CRUCIATE LIGAMENT DEFICIENT KNEE, AND PATELLAR MALTRACKING

PROCEDURE

ARTHROSCOPIC LATERAL RELEASE, DEBRIDEMENT OF PATELLOFEMORAL JOINT AND DEBRIDEMENT OF ANTERIOR SCAR

ANESTHESTAL

GENERAL

FINDINGS:

- I. GRADE IV CHANGES PATELLA AND LATERAL EDGE
- 2. LATERALLY TRACKING PATELLA
- 3. NORMAL MEDIAL AND LATERAL MENISCI
- 4. ABUNDANT SCAR LATERAL COMPARTMENT AND LATERAL OUTTER
- 5. ANTERIOR CRUCIATE LIGAMENT DEFICIENT KNEE

### DESCRIPTION OF

PROCEDURE The patient was taken to the operating room and given I gram of Ancel intravenously. After the uneventful induction of general spenthesis, a well-padded tourniquet was placed on the right upper thigh. Tourniquet was inflated to 350mm of Fig. after extanguinating with an Emarch bandage. Standard anterolateral and anteromedial portals were used after the sterile prep and draps. The above findings were noted. The extensive scar was removed with a shaver, this was in the lateral and anterior gutters. The anterior cruciate ligament was also noted to be posled off the back of the farmer and scarred down to the posterior cruciate ligament. There was a large Grade IV deficit on

TUCKAHOR SURGERY CENTER
OPERATIVE REPORT CONTINUED
Umsels Houndarilys
December 21, 1999

the lateral fluncesi conclyle on the superclateral edge. There was a corresponding lexion on the petalla, there was patella site and lateral petallar tracking. After the shaver was used to debride as much tissue as equid be removed from the peripatellar area, a Mayo scissors were used to subcutaneously and the lateral retinaculum was released. a drain was placed. All portals were closed in routine fashion. 30cs of 0.596 Marcaine with spinephrine was placed in the knee while the drain was clamped off. Sterile dressings were applied. Tourniquet was deflated. The patient was emerged from anesthesia and transferred to recovery room in stable condition.

Joel B. Gonzales, M.D.

/BG/tms D: 12/21/99 T: 12/21/99 JN: 01-02411 ORTHOPEDIC ASSOCIATES OF NORTHERN BERKSHIRE + 77 Hospital Avenue, NORTH ADAMS MA 01247-2550.

redacted HEENDENIYA, UMESH (Id #216664, dob:

**Encounters and Procedures** 

Clinical Encounter Summaries

Encounter Date: 05/01/2014

**Patient** 

HEENDENIYA, UMESH (43, M) ID# 216664 Appt. Date/Time Name

05/01/2014 04:00PM

DOB

05/05/1970

Service Dept.

Main Office

**Provider** 

SUK NAMKOONG, MD

Insurance

Med Primary: MEDICARE B-MA: NATIONAL GOVERNMENT SERVICES

Insurance #: 313054095A

Med Secondary: MEDICAID-MA:MASS HEALTH (WAM)

Insurance #: 100037605167

Prescription: ARGSDIR - Member is eligible.

### Chief Complaint

Followup: Osteoarthritis of knee

### HPI.

### Knee

Reported by patient.

Location: bilateral (right worse than left)

Quality: aching; throbbing Severity: mild; moderate

Timing: gradual

Context: cannot identify Alleviating Factors: rest

Aggravating Factors: walking; ROM; bikgin

Associated Symptoms: no numbness; no tingling; no swelling; no redness; no warmth; no ecchymosis; popplng/clicking

Previous Surgery: surgical procedure: (right knee arthroscopy X2); date: (1995,1999)

Previous injections: helped temporarily; helped significantly

Previous PT: none

Notes: The patient states the injection was very helpful but is wearing off a bit. He states riding a bicycle was more bothersome than walking for him

### Vitals

None recorded.

### Allergies

Allergies not reviewed (last reviewed 03/20/2014)

NKDA

### Medications

Name	Date	
agyctovir 800 mg tablet	01/17/14	filled
alprazolam 0.5 mg tablet	04/03/14	filled
escitelopram 20 mg tablet	04/03/14	filled
fenofibrate 54 mg tablet	04/01/14	filled
lamotrigine 150 mg tablet	04/03/14	filled
metformin 500 mg tablet	04/01/14	filled
oxcarbazepine 300 mg tablet	04/03/14	filled
risperidone 2 mg tablet	04/01/14	filled
simvastatin 20 mg tablet	04/01/14	filled
Strattera 60 mg capsule	04/07/14	filled

### **Problems**

· Osteoarthritis of knee

### ROS

None recorded.

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 17 of 75

ORTHOPEDIC ASSOCIATES OF NORTHERN BERKSHIRE . 77 Hospital Avenue, NORTH ADAMS MA 01247-2550

HEENDENIYA, UMESH (id #216664, dob: redacted

Physical Exam

Patient is a 43-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, and normal body habitus.

Gait and Station: Appearance: normal gait, no limp, and ambulates with no assitive devices,

Knees: Inspection Right: no deformity, mass, induration, warmth, or erythema and swelling (minimal). Inspection Left: no deformity, mass,

induration, warmth, erythema, or swelling.

Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: normal mood and affect and active and elert.

### Assessment / Plan

bilateral knee osteoarthritis

### 1. Oateoarthritis of knee

715.16: Osteoarthrosis, localized, primary, lower leg

### Discussion

### Patient Instructions

activity as tolerated

### Discussion Notes

The patient will continue with his activities but is wary about staying within a comfortable level. We will hold on another injection for now, I will see him back in 3-4 months

### Return to Office

Suk Namkoong, MD for ESTABLISHED PATIENT at Main Office on 09/15/2014 at 04:00 PM

### **Encounter Sign-Off**

Encounter signed-off by Suk Namkoong, MD, 05/02/2014.

Encounter performed and documented by Suk Namkoong, MD

Encounter reviewed & signed by Suk Namkoong, MD on 05/02/2014 at 10:04am

Encounter Date: 03/20/2014

Patient

Name

HEENDENIYA, UMESH (43, M) ID# 216664 |Appt. Date/Time

03/20/2014 03:00PM

DOB

redacted

Service Dept.

Main Office

Provider

SUK NAMKOONG, MD

Insurance

Med Primary: MEDICARE B-MA: NATIONAL GOVERNMENT SERVICES

insurance #: 313084095A

Med Secondary: MEDICAID-MA:MASS HEALTH (WAM)

insurance #: 100037605167

Prescription: ARGSDIR - Member is eligible.

### Chief Complaint

### Bilateral Knee

### HPI Knee

### Reported by patient.

Location: bilateral (right worse than left)

Quality: aching; throbbing Severity: moderate Duration: 3 months Timing: gradual Context: cannot identify Alleviating Factors: rest

Aggravating Factors: walking; ROM

Associated Symptoms: no numbness; no tingling; no swelling; no redness; no warmth; no ecchymosis; popping/clicking

Previous Surgery: surgical procedure: (right knee arthroscopy X2); date: (1995,1999)

Prior imaging: no recent studies Previous injections: none

Previous PT: none

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 18 of 75

ORTHOPEDIG ASSOCIATES OF NORTHERN BERKSHIRE • 77 Hospital Avenue, NORTH ADAMS MA 01247-2550

### HEENDENIYA, UMESH (Id #216664, dob: 1 redacted

Notes: The patient has had increasing knee pain for the past 3 months. He denies any injury. He usually walks in his apartment for 15-20 minutes but cannot do that because of pain. He does not hurt at rest. The right knee is worse than the left and both knees crack and pop a lot. He had 2 arthroscopies on the right side for torn cartilage.

### Vitals

03/20/2014 03:37 pm

Ht:

5 ft 11 in

Wt:

190 lbs

BMI:

26.5

BP:

118/90

### Allergies

Reviewed Allergies

NKDA

### Medications

### Reviewed Medications

Name	Date	
acyclovir 800 mg tablet	01/17/14	filled
alprazolam 0.5 mg tablet	03/05/14	filled
escitalopram 20 mg tablet	03/05/14	filied
fenofibrate 54 mg tablet	03/05/14	filled
lamotrigine 150 mg tablet	03/06/14	filled
metformin 500 mg tablet	03/05/14	filled
oxcarbazepine 300 mg tablet	03/07/14	filled
risperidone 2 mg tablet	03/05/14	filled
simvastatin 20 mg tablet	03/05/14	filled
Strattera 60 mg capsule	03/06/14	filled

### **Problems**

· Osteoarthritis of knee

### ROS

Patient reports no fever. He reports no dry eyes. He reports no difficulty hearing. He reports no frequent nosebleeds. He reports no sore throat. He reports no chest pain. He reports no cough. He reports no abdominal pain.

### Physical Exam

Patient is a 43-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, and normal body habitus.

Gait and Station: Appearance: normal gait, no limp, and ambulates with no assitive devices.

Kness: inspection Right: no deformity, mass, induration, warmth, or erytherna and swelling (minimal), inspection Left: no deformity, mass, induration, warmth, erythema, or swelling. Bony Palpation Right: no tenderness of the medial joint line or the lateral joint line or the lateral joint line. Soft Tissus Palpation Right: no tenderness of the quadriceps tendon, the lateral patellar retinaculum, the medial patellar retinaculum, the prepatellar bursa, or the patellar tendon. Soft Tissus Palpation Left: no tenderness of the quadriceps tendon, the lateral patellar retinaculum, the medial patellar retinaculum, the prepatellar bursa, or the patellar bursa, or the patellar tendon. Active Range of Motion Right: orepitus, flexion (130 deg), and pain at extreme limits of range (flexion) and extension normal. Active Range of Motion Left: flexion normal, extension normal, and crepitus. Stability Right: Lachman test negative. Stability Left: Lachman test negative.

Psychiatric: Orientation; oriented to time, place, and person. Mood and Affect: normal mood and affect and active and alert.

### **Procedure Documentation**

### Steroid Injection/Major Joint or Bursa:

After discussion of the risks and benefits, the patient elected to proceed with a corticosteroid injection into the right knee. Confirmed that the patient does not have history of prior adverse reactions, active infections, or relevant altergies. There was no effusion, erythema, or warmth, and the skin was clear.

The skin was sterilized with betadine. A 21 gauge needle was inserted into the joint via an anterclateral approach. The site was injected with a mixture of \_6\_ mg betamethasone and \_9\_ cc 1% lidocaine. The injection was completed without complication, and a bandage was applied.

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 19 of 75

ORTHOPEDIC ASSOCIATES OF NORTHERN BERKSHIRE • 77 Hospital Avenue, NORTH ADAMS MA 01247-2550

### HEENDENIYA, UMESH (id #216664, dob: redacted

The patient tolerated the procedure well and was instructed to avoid strenuous activity for the next 24-48 hours and to use ice, NSAIDs, or Tylenol for pain as needed. The patient will call immediately with any signs of infection or silengic reaction.

### Assessment / Plan

### bilateral knee osteoarthritis

### 1. Osteoarthritis of knee

715.16: Osteoarthrosis, localized, primary, lower leg

· X-RAY, KNEE

Side: BILATERAL Views (X-RAY, KNEE): AP, Lateral, Sunrise & PA Flexion

JOINT INJECTIONS: AFTER YOUR VISIT

### Discussion

### Patient Instructions

low impact activities, injection

### **Discussion Notes**

I recommended trying to do low impact exercises, such as an exercise bicycle for exercise. I also recommended trying an injection on the right side. The patient agreed. He will followup in 6 weeks

### **Return to Office**

Suk Namkoong, MD for ESTABLISHED PATIENT at Main Office on 04/28/2014 at 03:45 PM

### Results / Interpretations

### X-RAY, KNEE

 Side: BILATERAL, Views (X-RAY, KNEE): AP, Lateral, Sundse & PA Flexion tricompartmental arthritis with spurring on the right-worst in patellofemoral; mainly patellofemoral arthritis on left

### **Encounter Sign-Off**

Encounter signed-off by Suk Namkoong, MD, 03/20/2014.

Encounter performed and documented by Suk Namkoong, MD Encounter reviewed & signed by Suk Namkoong, MD on 03/20/2014 at 5:02pm

## EXHIBIT 5



### DAVIS HOSPITAL AND MEDICAL CENTER

1600 West Antelope Drive Layton, Utah 84041

(801)807-1000

DEPARTMENT OF DIAGNOSTIC IMAGING

Patient:

HEENDENIYA. UMESH M

Sex:

M

Date of Birth/Age:

/35Y

X-ray Number:

redacted 99326806962

Ref. Physician:

TRENTDRASMUSSENMD

Room Number:

EDD

Date of Procedure:

02/02/2006

**EXAMINATION: MRI LUMBAR SPINE W/O** 

ORDERING DIAGNOSIS: BACK PAIN

MRI OF THE LUMBAR SPINE 2/2/2006

CLINICAL HISTORY: Back pain.

TECHNIQUE: A multiplanar MRI of the lumbar spine was performed.

FINDINGS: The marrow signal is within normal limits. There is some dehydration of the disc space at L4-5. The cauda equina and thecal sac are within normal limits.

Axial images are as follows: L2-3: The disc space and neural foramina are within normal limits.

L3-4: The disc space and neural foramins are within normal limits. There are mild degenerative changes of the facets

L4-5: There is a posterior and left-sided disc bulge. This is below the LA exiting nerve rootiets. There is some impingement upon the thecal sac at this level due to the diffuse bulge. The focal disc herniation on the right side of the superior aspect of L5, measures approximately 5.9 mm. This is adjacent to the right L5 nerve rootlet and it could affect the exiting right L5 nerve rootlet. The S1 nerve rootlets are within normal limits. Degenerative changes are seen in the facets at L5-S1.

### **IMPRESSION**

- 1) Focal disc herniation appreciated along the right paracentral region of the superior aspect of L5, which could affect the L5 nerve rootlet.
- 2) Diffuse left and posterior bulge at L4-5, which is inferior to the exiting nerve rootlets at this site and findings may represent a complex disc bulge and herniation at this level. The Emergency Room physician was notified of the findings.

Sandra Althaus, M.D.

FINAL COPY IS ELECTRONICALLY SIGNED AND STATES FINAL AT BOTTOM OF REPORT

Page 1 of 2

Patient Name: HEENDENIYA, UMESH M

Davis Hospital and Medical Center

MRN: 328187

1600 W. Antelope Dr. Layton, UT 84041

DEPARTMENT OF DIAGNOSTIC IMAGING

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 22 of 75

DAVIS HUSPITAL AND MEDICAL CENTER
1500 West Antelope Drive Layton, UT 84041 (801) 807-7177

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### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 23 of 75

DAVIS HOSPITAL AND MEDICAL CENTER 1600 West Antelope Drive Layton, UT 84041 (801) 807-7177

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····	Liver profile				GB 🗆		Foley Catheter
·	Arnylase		1			Partoreas	☐ NGT tube
	Lipase		Ť	CT SCAN		n 🗆 pelvis	☐ Intravenous line
	Serum preg test				□ head	m m heivie	☐ hep lock ☐ fluid:
	Urinalyels			contrast:	DIV OP	enone 0	RATE:
	Urine C and S		1	CARDIOF	ULMONA	RY	
	Urine preg test		Order	7	est.	Time order	
	Blood cultures		- 11114		(0	Sent	
	Thyroid profile	-			3G		
[	drug levels:				n stein/CS		
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GNATUR	12		<del></del>	<del></del>			TO THE EVALUATION
N SIGN		12			<del></del>		O EMERGENCY MEDICAL
, Inc. Cont	ent by EDCare.				<del></del> _		EXITEDITION EXISTS 2/5/200
						<del>77</del>	
						CJ FI	UHUTHER EVALUATION NICE-
						∠J FI	URTHER EVALUATION NEEDED

Berkshire Medical Center EDM \*\*LIVE 5 5\* PAGE 1 DATE 05/12/14 @ 2209 EMERGENCY DEPARTMENT RECORD USER MPELKEY2 Unit # M000837770 Patient HEENDENIYA, UMESE Birthdate redacted Age/Sex 44/M Chief Complaint BACK PAIN (C) Recorded 05/12/14 @ Vitals ESI 4 PULSE BP 142 / 88 RESP O2 SAT 95 TEMP 98 3 WT 195 lbs PAIN SCALE 0-10 Scale PAIN PRESENT Y Allergies CODED No Known Allergies (Y) Triage Decision Complaint Description HPI Chief Complaint Description c/o back pain, Hx L3 herniated disc 2006, today moved out of appt and pain progressed to intolerable pain decreases when laying flat Past Medical History Hypercholesterolemia Diabetes(type 2) Bipolar Disorder, Depression, Post Traumatic Stress Disorder Knee Replacement (R knee Sx 1995, 1999 Home Medications Simvastatin (Simvastatin) 80 MG TABLET 80 MG TABLET 80 DAILY Metformin Hcl (Metformin Hcl) 500 MG TABLET 500 MG TABLET DAILY Metformin Hcl (Metformin Hcl)
Fenofibrate, Micronized (Fenofi 134 MG CAPSULE 134 MG CAPSULE DAILY 25 MG TABLET 25 MG TABLET DAILY Lamotrigine (Lamotrigine) 150 MG TAB 150 MG TAB DAILY Oxcarbazepine (Trileptal) 1 MG TABLET 1 MG TABLET 1 DAILY Alprazolam (Xanax) 5 MG TABLET 5 MG TABLET 5 DAILY Risperidone (Risperdal) Escitalopram (Lexapro) 0 25 MG TAB 0 25 MG TAB DAILY Atomoxetine Hol (Strattera) 80 MG CAPSULE 80 MG CAPSULE 80 DAILY Nursing Notes

EDM PAT zous ed chart record w doc

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 25 of 75

DATE: 06/11/14 & 0018 Berkshire Medical Center EDM \*\*LIVE 5.5\*

Patient Summary Report

The state of the s

But the second of the second o

Babiero: HEENDENEYA, UMESH

AD Provider: HOND, NESFOR O PA - ED

Agg/Sex: 44/M Acat No. M00672984036

Undt No: M000837770

PAGE 1

ED Physician: BOND, NESTOR O PA - ED, AH

Practitioner:

USER: EDM MNR

Murse: Alison Zamboni, RN

Arrival Date/Time: 05/12/14 - 2144 Triage Date/Time: 05/12/14 - 2157

Date of Birth: redacted

Stated Complaint: BACK PAIN

Chief Complaint: Back Pain or Injury

Priority: 4

ED Physician: BOND, NESTOR O PA - ED, AH

Practitioner:

Nurse: Alison Zamboni, RN

Arrival Date/Time: 05/12/14 - 2144 Triage Date/Time: 05/12/14 - 2157

Date of Birth: 05/05/1970

Stated Complaint: BACK PAIN

Chief Complaint: Back Pain or Injury

Status Event History:

05/12/14 2144 Awaiting Triage 2205 With Triage

2224 Waiting in Waiting Room

2319 Room Assigned

2323 In Room

2324 With Nurse

05/13/14 0024 With Doctor

0409 Chart Complete

Priority: 4

Allergy/Adverse Reaction

No Known Allergies

Type

Severity Date

Allergy

01/16/14

05/12/14 2157 Meliasa Pelkey

Pulse Rate (adult) 88

Pulse Rhythm Regular

Respiratory Rate 18

Temperature (Pahrenheit) 98.3

05/13/14 0218 Alison Larabee

Blood Pressure Systolic 121

Blood Pressure Diastolic 79

05/13/14 0218 Alison Larabee

Pulse Rate (adult) 64

Respiratory Rate 16

			MARKET THE STATE OF THE
	Procedure Name	Ordering Provider	E-Signed
5/13/14 01	11 Morphine Inj (Morphine Inj)	BOND, NESTOR O PA - ED, AH	Yes
	I Diszemin (Valium)	BOND, NESTOR O PA + ED; AH	Yes
	11 CT Lumbar Spine Wo	BOND, NESTOR O PA - ED, AH	Yes
5/13/14 013		BOND, NESTOR O PA - ED, AH,	Yes
5/13/14 014	9 Lyme with Ehrlichia & Babesia	BOND NESTOR O PA - ED AW	Yes
5/13/14 014	9 Hydrocodome/Apap 5/323 Disp	BOND, NESTOR O PA - ED, AR	Yes

```
DATE: 06/11/14 @ 0018
                          Berkshire Medical Center EDM **LIVE 5.5*
                                                                                   PAGE 2
USER: EDM MNR
                                   Patient Summary Report
Patients HHENDENIYA, UMESH
                                          Age/Sex: 44/M
                                                                     Acct No. M00672984036
ED Provider: BOND, NESTOR O PA - ED
                                                                     Undit No: M000837770
05/13/14 0149 Cyclobenzaprine 10 Mg Disp ... BOND, NESTOR O PA - ED, AH
                                                                          Yes
05/11/16 0302 Morphine Inj (Morphine Inj)
                                           BOND NESTOR O PA ED AH
                                                                          Yes
05/13/14 0322 Oxycodone/Apap Disp Pack (P... BOND, NESTOR O PA - ED, AH
                                                                          Yes
05/713/14 0322 TOSTESTEL GOOMS Tab Diam Pa. . BOND, NESTOR & PA BU, A
                                                                          Yes
05/13/14 0322 Frednisone Tab (Deltasone Tab) BOND, NESTOR O PA - ED, AH
                                                                          Yes
05013714 6322 Cyclobenter in My Disp ... BOND NESTOR O PA EDU AR
                                                                          Yes
05/12/14
          2157
                  Triage: Adult
                                                                       Melissa Pelkey, RN
 COMPLAINT EISTORY:
 Onset/Description c/o back pain, Hx L3 herniated disc 2006, today moved out of appt and
                  pain progressed to intolerable. pain decreases when laying flat.
 NEUROLOGICAL STATUS:
 Loss of Consciousness N
 Oriented To Person, Place, Time
 Patient at Baseline Orientation per Care Giver or Referral Y
 VITAL SIGNS Vital Signer
 Temperature (Fahrenheit) 98.3
 Temperature (Calculated Celsius) 36.8
 Temperature Source Oral
 Pulse Rate (adult) 88
 Pulse Rhythm Recular
 Respiratory Rate 18
 Pulse Omimetry 95
 Oxygen Delivery Mode Room Air
 BLOOD PRESSURE Blood Pressure:
 Systolic 142
Diastolic 88
Location Right Arm
Position Sitting
PAIN SCALE Pain Scale:
Pain Present Y
Scale Used 0-10 Scale
PAIN Pain:
Location Modifier Medial
Location Back
Pain Intensity 7
Description Aching, Throbbing, Spasm
IMMUNIZATIONS Immunizations:
Patient / Family reports childhood Immunizations Up to Date Y
SOCIAL HISTORY Social History:
Alcohol Use N
Substance Use N
Suspected Victim of Abuse, Neglect, or Violence * N
Feels Personally Threatened in Home Environment* N
Has Thoughts of Harming Self or Others N
HEIGHT & WEIGHT Reight & Weight:
Height (Feet) 5
Height (Inches) 11
Height (Calculated Centimeters) 180.340000
Weight (Pounds) 195
Weight in Calculated Kilograms 88.4504985
Weight (Calculated Grams) 88450.4985
Weight Measurement Method Self Reported
FRMALE Female:
```

```
DATE: 06/11/14 @ 0018 Berkshire Medical Center EDM **LIVE 5.5*
                                                                                       PAGE 3
  USER: EDM MNR
                                     Patient Summary Report
  Patient: HEENDENIYA, UMESH
                                                                        Acct No: M00672984036
                                            Age/Sex: 44/M
  ED Provider: BOND, NESTOR O PA - ED
                                                                        Unit No. M000837770
  05/12/14 2157 Past Medical History
                                                                           Meliasa Pelkey, RN
  MISCELLANEOUS HISTORY:
  Cancer N
  CARDIAC HISTORY:
  Hypercholesterolemia Y
  ENDOCRINE HISTORY:
  Diabetes Y
  Comment type 2
  MUSCULOSKELETAL RISTORY:
  Degenerative Disk Disease
  Comment L3 herniated Disc
  Knee Replacement Y
  Comment R knee Sx 1995, 1999.
  PSYCHO/SOCIAL HISTORY:
  Bipolar Disorder Y
  Depression Y
  Post Traumatic Stress Disorder Y
 05/13/14 0218 Vital Signs: Adult
                                                                           Alison Larabee, RN
  Pulse Rate (adult) 64
  Respirations:
  Respiratory Rate 16
  Oxvgen Delivery:
  Pulse Oximatry 96
  Oxygen Delivery Mode Room Air
  Blood Pressure:
  Systolic 121
  Diastolic 79
 Position Supine
 Pains
 Pain Intensity 4
 05/13/14 0406
                 <u>Disposition/Departure</u>
                                                                           Alison Zamboni, RN
 Disposition:
 Disposition Time 0341
 Patient verbalizes expectations of home care instructions Y
 IV Removed Y
 Has the IVF Downtime been charted YES
 Pain Intensity Moderate (4-6)
 Discharge Condition Stable
 Nursing Assessment on Departure see RN notes
MEDICATIONS
Medication
     Sch Date-Time Ordered Dose Admin Dose
     Doc Date-Time Given - Reason
                                             Site
                                                        Uger
MORPHINE 4 MG/ML INJECTION (MORPHINE INJ) IVP/STAT/STA
     05/13/14-0129 4 MG
                                  4 MG
     05/13/14-0146 Y
                                                        Brian Barber
     Pain Intensity: 8
DIAZEPAM 2 MG TAB (VALIUM) PO/STAT/STA
     05/13/14-0129 2 MG
     05/13/14-0146 Y
                                                        Brian Barber
NS 1,000 ML (NS 1,000 ML) IV/.QOM/ONE
```

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 28 of 75

DATE: 06/11/14 @ 0018 Berkshire Medical Center EDM \*\*LIVE 5.5\* PAGE 4 Patient Summary Report USER: EDM MNR

Dationt: HEENDENTYA, UMESH Age/Sex: 44/M Acct No: M00672984036 MD Provider: BOND, NESTOR O PA - ED Unit No: M000837770

Medication

Sch Date-Time Ordered Dose Admin Dose

Dog Date-Time Given - Reason 05/11/14-0230 999 MLS/HR 05/413/14-0949 9 Site User

Brian Barber

Entered by Bonnie J Gardner on 05/12/14 at 2232

Pt aware of wait in waiting room.

Entered by Alison Larabee, RN on 05/13/14 at 0208

Pt to CT via wheel chair.

Entered by Alison Zamboni, RN on 05/13/14 at 0310

Report from Brian B, RN.

Entered by Alison Zamboni, RN on 05/13/14 at 0335

Pt medicated with 40mg prednisone. Pt tol well. Reviewed f/up needs. To-go meds given. Pt demonstrates steady gait. Denies questions.

REPORTED MEDICATIONS

Prescription/Reported Neds	Type Issued Provider	Entered
Simvastatin (Simvastatin) 80 Mg Tablet	Reported	05/12/14
80 MG PO DAILY		
<last taken=""> =&gt; 05/11/14 2000</last>		
Metaforming Holl (Metaforming Holl) 500 Mg Tablet	Reported.	09/12/14
<ul> <li>Unknown Dose; PS Dague;</li> </ul>		···
Class Takens => <unlinder 05="" 11="" 14="" 2000.<="" dese="" p=""></unlinder>		
Fenofibrate, Micronized (Fenofibrate) 134 Mg Capsule	Reported	05/12/14
<unknown dose=""> PO DAILY</unknown>		
<last taken=""> =&gt; <unknown dose=""> 05/11/14 2000</unknown></last>		
Lamotrigine (Lamotrigine) 25 Mg Tablet	Reported	05/12/14
<ul> <li>Unknown Dosen BG DAILT;</li> </ul>		· · · · · · · · · ·
<last takens=""> <unknown 05="" 11="" 14="" 2000<="" dose="" td=""><td></td><td></td></unknown></last>		
Oxcarbazepine (Trileptal) 150 Mg Tab	Reported	05/12/14
<unknown dose=""> PO DAILY</unknown>		
<last taken=""> =&gt; <unknown dose=""> 05/11/14 2000</unknown></last>		
Alprazotam (Xanax) 1 Mg Tablet	Reported	05/12/14
1 MG PG DATEY		
<task taken=""> ** <unknown 05="" 11="" 14="" 2000<="" dose*="" p=""></unknown></task>	* *	
Escitalopram (Lexapro) 5 Mg Tab	Reported	05/12/14
5 MG PO DAILY		
<last taken=""> =&gt; 05/11/14 2000</last>		
Risperidone (Risperdal) 0.25 Mg Tab	Reported	05/12/14
MG PO DALLA		·
<pre><last taker=""> =&gt; 05/11/14 2005</last></pre>	· · · · · · · · · · · · · · · · · · ·	ļ
Atomoxetine Hcl (Strattera) 80 Mg Capsule	Reported	05/12/14
80 MG PO DAILY		
<last taken=""> =&gt; 05/11/14 2000</last>		

Primary Impression:

Low back pain

Secondary Impressions:

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 29 of 75

USER: EDM MNR

DATE: 06/11/14 @ 0018 Berkshire Medical Center EDM \*\*LIVE 5.5\*

Patient Summary Report

Patient: HEENDENIYA, UMESH

ED Provider: BOND, NESTOR O PA - ED

Age/Sex: 44/M

Acct No. M00672984036

PAGE 5

Unit No: M000837770

Disposition: HOME, SELF-CARE Comment: departed at 0341

Condition: Stable

Departure Date/Time: 05/13/14 - 0207

BBARBER

MPELKEY2 Melissa Pelkey Brian Barber

AZAMBONI Alison Zamboni ALARABEE Alison Larabee

Page: 1 of 5

Medical Records' copy Berkshire Medical Center

Report Status: Signed

Berkshire Medical Center

EMERGENCY DEPARTMENT PROGRESS NOTE

Médical Record #: M000837770 Patient: HEENDENIYA,UMESH

DOB: redacted Acct. #: M00672984036

Date of Service: 05/12/14

Attending Physician: BOND, NESTOR O PA - ED

### <u>HISTORY OF PRESENT ILLNESS:</u>

The patient, Umesh Heendenlya, is a 44 year old male seen on May 13, 2014 for stated complaint of Back Pain. Pt has chronic back pain for the past 8 years, he was diagnosed with L3 herniated disc. Pt has been living with pain even has adjusted to sleeping on floor to help with pain. Today pt was moving and on his drive out of town his pain became unbearable so he decided to come to ER. Pt has not had any bowel or bladder dysfunction, no radiating pain.

Time Seen by Provider: 00:24 Mode of Arrival: Ambulatory

Chief Complaint: Back Pain or Injury Stated Complaint: BACK PAIN Location of occurrence: Home

Information Provided By: Patient, Family Member (step mom)

History Limitations: no limitations

Location: back
Onset: weeks
Timing: constant
Intensity (1 to 10): 9
Quality: sharp
Context: back pain

Exacerbated by: movement

Relieved by: nothing

Coded Allergies:

No Known Allergies (Verified , ., 1/16/14)

Home meds reviewed in EMR: Yes

### **REVIEW OF SYSTEMS:**

ROS limitations: no limitations

CONSTITUTIONAL: No recent illness, No fever, No sweating, No malaise, No fatigue, No weight gain, No weight loss, No change in appetite, No night sweats, No changes in blood sugar, No general weakness, No changes in blood pressure, No recent surgery, No other

RESPIRATORY: No shortness of breath, No wheezing, No coughing, No sputum production, No hemoptysis, No pleurisy. No other

GASTROINTESTINAL: No hematemesis, No hematochezia, No melena, No diarrhea, No constipation, No abdominal distention, No other, No dysphagia, No abdominal pain, No nausea, No vomiting, No change in

Berkshire Medical Center Page: 1 of 5

Name: HEENDENIYA, UMESH DOB: redacted PCP: PCP, NONE-ONLY USE AS PRIM MD

Esigned by:BOND,NESTOR O PA - ED DT/TM Esigned:05/13/14 0321

Esigned by: DT/TM Esigned:

Account #: M00672984036 Medical Record #: M000837770

Page: 2 of 5

bowel habits

MUSCULOSKELETAL: back pain

SKIN: No rash, No skin lesions, No skin changes, No redness, No laceration, No abrasion, No burn, No tear.

No discoloration, No other

**NEUROLOGICAL:** No headache, No focal weakness, No numbness/paresthesias, No speech disturbance, No memory problems, No dizziness, No lightheadedness, No loss of consciousness, No head injury, No problems with balance, No altered mental status. No seizure, No other

### PAST MEDICAL HISTORY:

Records reviewed: EMR for this encounter, nurses notes

hypercholesterolemia, diabetes (type 2), No cancer

bipoiar disorder, depression, PTSD

SOCIAL HISTORY: no alcohol use, no substance use

IMMUNIZATIONS: immunizations up to date

EXAM:

Height: 71 in, Weight: 195 lb

Vital Signs

т.	-13110								
	Date Time	Temp	Puise	Resp	B/P	Pulse Ox	O2 Delivery	O2 Flow Rate	FIO2
	5/13/14 02:18		64	16	121/79	96	Room Air		
	5/12/14 21:57	98.2	88	18	142/88	95	Room Air		

### **EXAM**

alert and oriented times three, no acute distress

Exam Limitations: no limitations

**GENERAL**: alort

ENT: mucous membranes moist

NECK: supple, normal inspection, full range of motion

RESPIRATORY: lung sounds clear to auscultation, breath sounds equal bilaterally CARDIOVASCULAR: regular rate and rhythm, full equal and symmetrical pulses

ABDOMEN: soft, normal bowel sounds, No tenderness, No distension, No rebound, No rigidity, No guarding.

No pulsatile mass, No masses palpable, No organomegaly, No hepatomegaly, No splenomegaly, No

Murphy's sign, No McBurney's point, No Psoas sign, No Obturator sign, No other

BACK: full range of motion, midline vertebra point tenderness (lumbar spine), other (straight leg test is positive on right leg at 45 degrees, left leg is positive at 90 degrees, strong dorsiflexion and plantarflexion)

Berkshire Medical Center

Page: 2 of 5

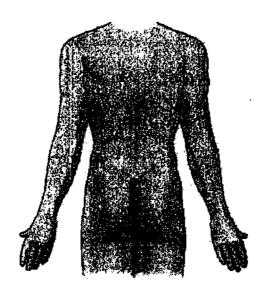
Name: HEENDENIYA, UMESH DOB: redacted PCP: PCP, NONE-ONLY USE AS PRIM MD

Esigned by:BOND, NESTOR O PA - ED DT/TM Esigned:05/13/14 0321

Esigned by: DT/TM Esigned:

Account #: M00672984036 Medical Record #: M000837770

Page: 3 of 5



### 1 - tender

MUSCULOSKELETAL: normal range of motion

SKIN: warm, dry, intact

NEUROLOGIC: awake, alert, oriented times four, clear fluent speech, normal motor strength, moving all

extremities

PSYCHIATRIC: normal mood and affect

### TESTS:

### MEDICATIONS:

Medications (Trade)	Dose Ordered	Sig/Sch Route	Start Time Stop Time	Status	Last Admin Dose Admin
Morphine Sulfate (Morphine Inj)	4 mg	STAT STAT	5/13/14 01:29 5/13/14 01:32	DC	5/13/14 01:48
Diazepam 2 mg	2 mg	STAT STAT	5/13/14 01:29 5/13/14 01:33	DC	5/13/14 01:46
Sodium Chloride (NS)	1,000 ml @ 0 mls/hr	Q0M ONCE IV	5/13/14 01:30 5/13/14 01:34	DC	5/13/14 01:47
Acetaminophen/	TAKE	TAKE HOME PACK ONCE	5/13/14 02:00	DC	
Hydrocodone Bitart (Vicodin Disp Pack (6 Tabs))	TABLET	PO	5/13/14 02:00		
Cyclobenzaprine	TAKE _1	TAKE HOME PACK ONCE	5/13/14 02:00	DC	
HCI	TABLET	PO	5/13/14 02:00	L	

Berkshire Medical Center

Page: 3 of 5

Name: HEENDENIYA, UMESH DOB: redacted PCP: PCP, NONE-ONLY USE AS PRIM MD

Esigned by:BOND, NESTOR O PA - ED DT/TM Esigned:05/13/14 0321

Esigned by: DT/TM Esigned:

Account #: M00672984036 Medical Record #: M000837770

Page: 4 of 5

(Flexeril 10 Mg (3 Tab/Disp Pak))	ORA				
Morphine Sulfate (Morphine Inj)	4 mg	ONCE ONCE IVP	5/13/14 03:15 5/13/14 03:16	5/13/14 03:12	

CT/US/MR:

imaging Modelity: CT

Body Area/Test Name: lumbar spine imaging test read: report viewed by me

Progress/Reading

degenerative changes and disc bulging L4-5 and L5-S1: partial sacralization L5, no fracture

Core Measures

Core Measures Reviewed: None applicable

### **MEDICAL DECISION MAKING:**

COURSE:

pt feel better after pain medication, he will be discharged with percocet, flexeril, prednisone and ibuprofen Counseled Patient/Family: imaging results, diagnosis, follow up

### **DISPOSITION SUMMARY:**

DIAGNOSIS/IMPRESSION:

Primary Impression: Low back pain

DISPOSITION: Home, Self Care

Condition: Stable REFERRALS:

PCP, NONE-ONLY USE AS PRIM MD (PCP)
Patient Instructions: Back Pain, Adult

Additional Instructions:

rest, apply ice and heat to back, stretch and follow up with doctor

Scripts

Prednisone Tab 20 Mg Tab2 Tab PO DAILY #8 TAB

Prov:BOND.NESTOR O PA - ED

5/13/14

Ibuprofen 800 Mg Tablet1 Tab PO TIDPRN #30 TAB

AS NEEDED FOR PAIN

Prov:BOND,NESTOR O PA - ED 5/13/14

Cyclobenzaprine Hcl (Flexerii)5 Mg Tablet1 Tab PO TIDPRN #14 TAB

AS NEEDED FOR PAIN

Prov:BOND.NESTOR O PA - ED 5/13/14

Oxycodone/Acetaminophen 5-325 Mg (Percocet 5-325 Mg)1 Tab Tab1 Tab PO Q4HPRN #20 TAB

AS NEEDED FOR PAIN

Prov:BOND, NESTOR O PA - ED 5/13/14

I reviewed the documentation: No scribe was used.

<del>\_</del> .

Barkshire Medical Center Page: 4 of 5

Name: HEENDENIYA, UMESH DOB: redacted | PCP:PCP, NONE-ONLY USE AS PRIM MD

Esigned by:BOND, NESTOR O PA - ED DT/TM Esigned:05/13/14 0321

Esigned by: DT/TM Esigned:

Account #: M00672984036 Medical Record #: M000837770

PCP COPY: Pcp,None-Only Use As Prim MD

Copies to:

CC1: CC2: CC3: CC4:

BOND, NESTOR O PA - ED

May 13, 2014 02:32

PCP COPY: PCP, NONE-ONLY USE AS PRIM MD

Berkshire Medical Center

Name: HEENDENIYA, UMESH DOB: redacted PCP:PCP, NONE-ONLY USE AS PRIM MD

Esigned by:BOND, NESTOR O PA - ED DT/TM Esigned:05/13/14 0321

Esigned by: DT/TM Esigned:

Account #: M00672984036 Medical Record #: M000837770

Report #: 0513-0042 \*\*Report's Status: Signed\*\*
DICTATED BY: BOND, NESTOR O PA - ED For

Page: 5 of 5

Page: 5 of 5

### Berkshire Medical Center DIAGNOSTIC IMAGING DEPARTMENT 725 North Street, Pittsfield, MA. 01201 - 413-447-3233

Patient: HEENDENIYA, UMESH

Phone: (508)630-6757 Exam Date: 05/13/14

Exam: CT Lumbar Spine Wo

Attending M.D.:

D.O.B.:redacted Age/Sex: 44/M

Ordering M.D.:BOND, NESTOR O PA - ED E.D. Attending M.D.: BOND, NESTOR O PA - ED

Primary Care M.D.: PCP, NONE-ONLY USE AS PRIM MD

X-Ray #: M000837770

Location: ECC.BE Other Location:

Clinical History:

pain

### CT SCAN OF THE LUMBAR SPINE WITHOUT CONTRAST.

### Technique:

Unenhanced CT of the lumbar spine was performed and reconstructed in the axial, coronal and sagittal plane.

Comparison: No relevant prior examination.

### Findings:

Levoconvex scollotic curvature of the lumbar spine measures Cobb angle of 16 degrees. Vertebral body height and alignment are normal. There is transitional anatomy of the lumbosacral junction with partial sacralization of S1 on the right. Small somewhat rudimentary ribs are present at the T12 level. The numbering is based upon the assumption of 5 lumbar type vertebral bodies with the last rib-bearing vertebral body being designated as T12.

No acute fracture or subluxation. Bone mineralization is normal. At L3-L4 there is a small right paracentral and foraminal disc protrusion resulting in mild deformity of the ventral thecal sac and mild right neuroforaminal encroachment.

There is moderate degeneration of the L4-L5 intervertebral disc with left lateral endplate osteophytes causing mild left neuroforaminal encroachment.

The remainder of the intervertebral discs appear essentially unremarkable.

Paravertebral soft tissue structures appear normal.

### IMPRESSION:

Transitional shape of L5 which is sacralized on the right.

Small right paracentral disc hemiation at L3-L4 causing minimal deformity of the ventral

Report #: 0513-0035 Page: 1 of 2

thecal sac and mild right neuroforaminal encroachment.

This study has been interpreted and dictated at Berkshire Medical Center.

Accession Number: 6411650.001

Transcribed by; KW

Interpreting Physician: WINGER, DAVID I MD

Rec'd in meditech on : 05/13/14 0956 Signed by: WINGER,DAVID I MD

Technologist: HC

Exam CPT #: 72131, Order #: 0513-0051

Report #: 0513-0035 Acct#: M00672984036 Med Rec#:M000837770

Report Status: Signed

Report #: 0513-0035 Page: 2 of 2



Date: 05/12/14

Account Num: M00672984036 Med Rec Num: M000837770 Patient: HEENDENIYA,UMESH

Location: ECC.BE

Physician: BOND, NESTOR O PA - ED

### **Patient Visit Information**

You were seen today for:

Low back pain

#### Staff

Your caregivers today were:

Physician

BOND, NESTOR O PA - ED

Nurse

ΑŻ

### **Patient Instructions Reviewed**

Back Pain, Adult

received 05/13/14 - 0322

### **Activity Restrictions or Additional Instructions**

rest, apply ice and heat to back, stretch and follow up with doctor

### **Medication Dose and Instructions**

Cyclobenzaprine Hcl (Flexeril) 1 TAB, ORAL THREE TIMES A DAY AS NEEDED#14
Ibuprofen 1 TAB, ORAL THREE TIMES A DAY AS NEEDED#30
Oxycodone/Acetaminophen 5-325 Mg (Percocet 5-325 Mg) 1 TAB, ORAL EVERY FOUR HOURS AS NEEDED#20
Prednisone Tab 2 TAB, ORAL DAILY#8

### Follow-up

Please contact the following to make an appointment for follow-up care:

PCP, NONE-ONLY USE AS PRIM MD

Note: Your health care plan may require a referral from your primary care provider prior to making an appointment.

For Umesh Heendeniya, Date of Birth: redacted

Asha A. Naidu, MD 190 Groton Road, Suite 290, Ayer, MA 01432 978-772-1277

8/16/2012

Regarding: Umesh Heendeniya (DOB: redacted )

To Whom It May Concern:

Mr. Heendeniya is a patient of mine and has been under my care since 6/3/2008. He has been diagnosed with Diabetes, and Hypercholesterolemia. Mr. Heendenyia is currently taking metformin to help control his blood sugar, and simvastation to control his high cholesterol.

Sincerely,

Asha A. Naidu, MD



Physician Group

9/24/15

Regarding: Umesh Heendeniya DOB: 5/5/1970

To Whom It May Concern:

Mr. Heendeniya is a patient of mine and has been under my care since 5/22/15. He has been diagnosed with diabetes, hypercholesterolemia, and neuropathy. Mr. Heendeniya is currently taking Metformin to help control his blood sugar. Simvastatin, Vascepa and Fenofibrate to control his high cholesterol. He is also taking Neurontin for neuropathy.

Sincerely,

Stacy Jaylor Hand Stacy Taylor Hunt, DO

Case 5:15-cv-01238-GTS-TWD Document 21-6 Filed 03/25/16 Page 2 of 87

IN THE DISTRICT COURT OF THE 9th JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA,  Plaintiff,  Vs.  Case No. CF-95-466  UMESH HEENDENIYA,  Defendant.  VERDICT  MURDER in the first degree  We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:  Defendant is:  Guilty and fix punishment at Not Guilty.  CR 10-14  State of Obstorna, Court Clerk, it and to Paper Outer, and control of the guilt of the guilty and fix the guilty and guilty and guilty.		
Plaintiff,  Va.  Case No. CF-95-466  UMESH HEENDENIYA,  Defendant.  VERDICT  MURDER in the first degree  We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:  Defendant is:  Guilty and fix punishment at  X Not Guilty.	IN THE DISTRICT COURT OF THE THE STATE OF OKLAHOMA SITTING	9th JUDICIAL DISTRICT OF G IN AND FOR PAYNE COURTYS
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UMESH HEENDENIYA,  Defendant.  VERDICT  MURDER in the first degree  We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:  Defendant is:	Plaintiff,	SEPUI PL
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VERDICT  MURDER in the first degree  We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:  Defendant is:  Guilty and fix punishment at	umesh heendeniya,	) )
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X Not Guilty.  redacted  FOREPERSON  State of Ottoboons	Defendant is:	
redacted FOREPERSON  The of Ottobara	Guilty and fix punishment at	'
FOREPERSON COMMON COMMO	Not Guilty.	
CR 10-14  State of Chiahoma County of Playne 1. Line B. Leftbart, Court Clerk, in and for Playne County, ON, do handly certify that the altitude and trengthing is a true and correct cappy of the original indigeneral spor		
of record as that contains all ambientary. One to handercomy horizon! I have been under yet purple hand and affiliated my official read.  Use A AMBIERT, Court Clark.	CR 10-14	State of Oldshorne County of Payne 1. Lie S. Laribert, Court Clerk, in and to: Payne County, OK, do harely cornly that the above and longoling is a true and contact opy of the optimal instrument more on the and of record in the officer at Silberthe, OK, in harbonary hereot have harbonarity and up that hard and afficed my official seal this county of the S. LAMSREST, Court Dierk

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 44 of 75

Case 5:15-cv-01238-GTS-TWD Document 21-6 Filed 03/25/16 Page 4 of 87

VERIFICATION OF CRIME/ LOST PROPERTY PD 542-061 (Rev. 7-05-15
Search and service fee of \$15.00 MUST accompany this application, Except that CHIME VECTIME will be existed to a FREE COPY of that report. MAKE CHECK OR MOSIEV ORDER PAYABLE TO THE PALICE GEPARTMENT, CITY OF NEW YORK, statist requests to the Police Copyriment, Criminal Records Section, P.O. Sox 2522, New York 10272-2528. Ne retund of the search and service he will be reade in any case. ALL APPLICABITS must enclose a stamped self-addressed envelopes.
Christian Humber Present of Second May For He by Chimenal Records Section C
Hamilto Worksh Harndeniya (VIC+1171)
188 Stearns Kond
Mass or out has been seen to be took place t
68
2. Date reported to Politics  Three of known) 1740  This report Crime Disher Ideacriby Concerns: Loss Property  CO
3. Pull name and address of complainant /victim as reported to Police Department
Date and Time of Orime!  Loss of Property of difference DATE  THE DATE CONTROL DATE  THE DATE OF THE D
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HET RUCTURES: In order to find this record you MURT furthful life formulated above, puriscularly the complete number and precises of record (Occurrings). Verification of your request-cashed be made without this between this completed number may be obtained by calling the precises or secured conceived during the hours of it a.m. to 5 p.m. to 80th Detach—Bubmill in Detach.
senethre sound concerned during the hours of it a.m. to 5 p.m. Bo Not Detech—Babmill in Bugillante.
Timesh Hendaniya 1111-7-2000 FOR POLICE DEPARTMENT USE ONLY
FOLLOWING IS A VERIFICATION OF THE ABOVE REQUEST MOTOR VEHICLES
WARRICY
) MEAT
PMA-COTTRING
7/200
OPFICE EQUIPMENT
TV. MADIOS, CAMEINAS, ETC.
NORTH CONTROL OF THE
SHARMARI S COOK
TRESLUNEOUS
BINEFILY DESCRIBE MANHEN OF CHIMELLOOS OF CHOPERTY
Mesacing
So rariative attack
NARRATIVE: AT TIP/O ABOVE COMPL STATES LISTED PERP DID THREATEN PHYSICAL HARM AFTER
BRIEF TRAFFIC INCIDENT. COMPL FURTHER STATES PERP EXITED HIS VEHICLE.
SLASHED FRONT TIRES WITH KNIFE AND PROCEEDED TO MENACE COMPL WHILE VERBALLY THREATENING HIM WITH PHYSICAL HARM, VEHICLE FLED N/B ON FORT HAMILTON
PARKWAY IN A VAN BLUE/GREEN IN COLOR WITH POSSIBLE NY REG BZF3240 OR BZE3240.
ALARM HO. Homer 12/01/26

### Detail For Response ID: 1991845045492973583

Creation Date And Time 09/11/2014 15:56:04

First Dispatched 09/11/2014 16:04:32 [508s Create To Dispatch]

First Arrived 09/11/2014 16:16:28 [716s Dispatch To Arrived]

Sequence Number HCSO:2014:197096

1223

Primary Resource Kramer, Richard (HCSO239)

Boylan, James (HCSO362)

Status Disposed

Response Type Information

Location POWELL RD/ENDSLEY RD

Address

Zone 1-5

Priority 5 Priority 5

Call Origin P911

Caller Name

Caller Number

Case Numbers

Disposition Codes \_\_Assistance Rendered

in the second	alle and a second assessment as a second	First Statuses Per Resour		Sand and the State of the section of
1223	Dispatch	09/11/2014 16:04:32		
1223	10-51	09/11/2014 16:05:45	Jerus não Cale de Procorda	Record of Hernando County Sheriff Office



I attest to the authoraticity of this sea

Records Custodian of Hersando County Sheriff's Office Designed

Sheriff's Office Designed

Notary stamp or sea

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 47 of 75

Case 5:15-cv-01238-GTS-TWD Document 21-6 Filed 03/25/16 Page 7 of 87

Record of Heramado
County Sheriff Office

1 strest to the authenticity of this seal

1223 10-97 09/11/2014 16:16:28

10-98

1223

09/11/2014 16:40:52 Sheri

Records Consoding of Hernando County, Sherid's Office Designes,

Cortified on 15/15

	N-	otes
09/11/2014 15:54:30	hdoyle	What does the suspect vehicle look like? WHI CAR 4DR
09/11/2014 15:55:09	hdoyle	What is the vehicle description? Make, model, color, year, tag #, etcLAST PART OF TAG 2YG
09/11/2014 15:55:36	hdoyle	What is the driver doing? How is the vehicle reckless?MADE CALLER RUN OFF THE RDWAY AND DAMAGED HIS VEH
09/11/2014 15:56:02	hdoyle	Time lapse?NOW
09/11/2014 15:56:11	hdoyle	CALLER IS FOLLOWING VEH
09/11/2014 15:56:25	hdoyle	Passing grass finch
09/11/2014 15:56:30	hdoyle	SB ON EMERSON
09/11/2014 15:57:25	hdoyle	TURNED ON POWELL
09/11/2014 15:57:33	hdoyle	WB ON POWELL
09/11/2014 15:58:13	hđoyle	CALLER IS FOLLOWING IN A 2005 GRN TOY COROLLA
09/11/2014 15:58:48	hđoyle	TURNING ONTO ENDSLEY SB
09/11/2014 15:58:53	hdoyle	Address of HCSO:2014:197096 has been modified from
09/11/2014 15:58:56	hdoyle	Address of HCSO:2014:197096 has been modified from
09/11/2014 15:59:46	hdoyle	CALLER HAS BEEN NON STOP HONKING HIS HORN TRYING TO GET THE VEH TO STOP



----

09/11/2014 16:00:53	hdoyle	TURNING WB ONTO SATURN		
09/11/2014 16:01:47	hdoyle	POSS A WHI DODGE 4DR CAR		
09/11/2014 16:01:58	hdoyle	NOW NB ON RACKLEY		
09/11/2014 16:02:51	dsouth	CALLER IN THE WHI DODGE LL		
09/11/2014 16:03:16	dsouth	ADV THAT SHE ACCIDENTALLY RAN HIM OFF OF THE ROAD DUE TO A BLIND SPOT		
09/11/2014 16:03:29	dsouth	CALLER NOW ADV THAT SHE DOES NOT WANT TO GO HOME BECAUSE THE SUBJ IS NOW FOLLOWING		
09/11/2014		CALLER IS		
16:03:42	dsouth	CALLER ALSO HAS KIDS IN THE CAR		
09/11/2014 16:04:04	dsouth	CALLER DOES NOT WANT TO STOP AT ALL		
09/11/2014 16:04:39	dsouth	CALLER IS CONCERNED AND DOES NOT WANT TO STOP BECAUSE HE IS FOLLOWING HER		
09/11/2014 16:05:14	hdoyle	CALLER WILL BE AT		
09/11/2014 16:05:35	hdoyle	1025		
09/11/2014 16:06:25	dsouth	1045 REF THE INCIDENT		
09/11/2014 16:40:36	rkramer	Response HCSO:2014:197096. Call code changed from Reckless Driver to Information.		
09/11/2014 16:40:36	PPSS	HCSO:2014:197096 Priority 3 Priority 3 has been changed to 5 Priority 5 Agent:rkramer Workstation:HCSO-06886		



Records

Record of Hernando County Sheriff Office

Records Carfolian of Horasado County
Shariff's Office Designation

Sheriff's Office Designed



### Medical Claim Status

Medical Claim Status:

Open

Total Billed:

\$21,382,23

**Total Paid:** 

\$9,475.37

View

Available

Your medical claim is being handled by Ann Alfred. Get Contact

Info.

Do you have new information about your treatment? Send a treatment update



### **FAQ**

- > How long should it take to review and pay medical bills?
- > How can I send you my medical bills?
- > Will my examiner be notified of my uploaded bitis? See More FAQ



### Resource Center

- > About the Claims Process
- > How an Accident Affects My Rate
- > Insurance Terms
- > Reporting a Claim Online
- > About GE/CO Auto Repair

Xpress@

### **Medical Providers OTHER**

10/01/2014 \$6.32

Total for this provider: \$6.32 Billed \$5.06 Paid

Service Date	Bill Amount	Paid Amount	Status	ЕОВ	Details
		****		Not	

\$5.06

Paid

### National Radiology Consultants Pa

Total for this provider: \$230,00 Billed \$184.00 Paid

Status EOB Details Service Bill Pald Amount Date Amount

### Case 5:15-cv-01238-GTS-TWD Document 55-1 Filed 07/18/16 Page 52 of 75

Case 5:15-cv-01238-GTS-TWD Document 21-6 Filed 03/25/16 Page 12 of 87

CUSTOMER #: 127773

113520



\*INVOICE\*

10133 US Highway 19 Port Richey, FL 34668 (727) 862-5411

PAGE 1 MV-24547 BUS. SERVICE ADVISOR: 16211 STEVEN A. JOHNSON COLOR YEAR MAKE/MODEL VIN LICENSE MILEAGE IN / OUT TAG TOYOTA 140285/140285 PAYMENT NV OEL. DATE PROD DATE WARR EXP PROMISED PO NO. RATE INV. DATE 210CT14 DE 17:30 300CT14 221G 300CT14 R.D. OPENED READY OPTIONS: ENG: 1.8 Liter DOHC 13:07 21DCT14 13:06 300CT14 LINE OPCODE TECH TYPE HOURS A REPAIR PER BODY SHOP EST LIST NET TOTAL BODYEST REPAIR PER BODY SHOP EST 14967 CBM 660.00 660.00 6 90467A008 RETAINER 0.89 0.89 5.34 14 90467-10183 CLIP 1.12 1.12 15.68 1 T01039107 HOLE CVR 30.00 30.00 30.00 PARTS: 51.02 LABOR: 660.00 OTHER: 0.00 TOTAL LINE A: 711.02 B BODY PAINT BODYPNT BODY PAINT 15880 CBP 519.20 519.20 0.00 LABOR 519 20 ОПИЕВ: 1910000 PARTS: TOTAL LINE B: 519.20 \*\*\*\* C\*\* SUSPENSION ALIGNMENT 重新支持等6 DSGM GENERAL MAINTENANCE 14800CBMEC 69.95 69.95 PARTS: 0.00 LABOR; 69.95 OTHER: 0.00 TOTAL LINE C: 69.95 \*\*\*\*\*\*\*\*\*\* MISC PAINT AND MATERIALS CMAT 309.30 309.30 SUBL R M P AUTOMOTIVE INC NO INVOICE # VIN 5C431943 CBM 466.80 Thank you for the opportunity to service your vehicle today. Your satisfaction is our #1

Thank you for the opportunity to service your vehicle today. Your satisfaction is our #1 Goal. If you are not "COMPLETELY SATISFIED" with your service experience Please contact Joe Humet by telephone at 727-862-5411 or by email at joehumet@edmorse.com

WARRANTY STATEMENT AND DISCLAIMER: PLEASE SEE THE DEALERSHIP'S LIMITED WARRANTY ON THE REVERSE SIDE OF THIS REPAIR INVOICE.

By signing below, you acknowledge that you were notified of and authorized the Dealership to perform the services/repairs itemized in this invoice and that you received for had the opportunity to inspect any replaced parts as requested by you. The vehicle is being returned to from in exchange for your payment of the Amount Due,

CUSTOMER SIGNATUR

DATE

ASE SEE THE ERSE SIDE OF	"SHOP SUPPLY COSTS: We have added a cost of labor and parts, not to exceed \$25.00 to the Repub Order. This charge represents costs and predict to the motor vertets inpair
notified of and opportunity to The vehicle is of the Amount	lacility for intentiancous shap supplies and worsh disposal. The State of Invita repairing a \$1.00 for to be collected for each new imposite in the state (s.407,718), and a \$1.50 lee to be collected for each new of invitantiation states and in the pair (s. 403,718).
	ALL PARTS ARE NEW UNLESS OTHERWISE INDICATED.
AUTHORIZED DEALE	RSHIP REPRESENTATIVE SIGNATURE

DESCRIPTION	TOTALS
LABOR AMOUNT	1249,15
PARTS AMOUNT	51.02
GAS. OIL, LUBE	0.00
SUBLET AMOUNT	466.80
MISC. CHARGES	309.30
TOTAL CHARGES	2076.27
LESS INSURANCE	0.00
SALES TAX	145.34
PLEASE PAY THIS AMOUNT	2221.61



Al Nienhuis

### Hernando County Sheriff's Office

P.O. BOX 10070 - BROOKSVILLE, FL 34603-0070 FAX 352 796-0493 PHONE 352 754-6830

March 23, 2015

To: Umesh Heendeniya

This is in response to your request dated March 21, 2015, pursuant to the Florida Constitution Article I, section 24, and Florida's Public Records Law, Florida Statute Chapter 119.

1. Information on deputies that would identify the location of their home addresses is exempt under Florida State Statute 119.071(4)(d)(2).

Reference items numbered two through six; the Hernando County Sheriff's Office has no records responsive to these requests.

Sincerely,

Lana Erickson

Records Manager

Hernando County Sheriff's Office

n CO

Commission # EE 117744
Explices August 21, 2015
period then long High Internation State - The

Record of Hernando County Sheriff Office

I spens to the authenticity of that are

Records Outsodier of Hersando Courty

Sheriff's Office Designed

Records

Notary Marin Or 968



Terry L. Rhodes
Executive Director

2900 Apalaches Parkway Tallahasses, Florida 32389-0500 www.fihsinv.gov

March 23, 2015

Umesh Heendeniya

Dear Mr. Heendenlya:

Thank you for your recent request regarding motor vehicle/vessel records.

We regret to inform you that the department cannot process your request. The personal information you are requesting is that of law enforcement personnel. Pursuant to Section 119.071, Section 4, Part 2d, Florida Statutes, this information is exempt from the provisions of Section 119.07(1), Florida Statutes.

The Driver Privacy Protection Act, 18 United States Code, Sections 2721-2725 (DPPA), exempts personal information contained in motor vehicle or driver license records from disclosure except to individuals/companies which qualify under any of the 15 exceptions autiined therein. Personal information includes social security number, driver license/identification (ID) card number, name, address, telephone number and medical or disability information.

RECORDS INFORMATION & RESEARCH UNIT 2900 APALACHEE PARKWAY, MS91 TALLAHASSEE, FL 32399 (850) 617-2908

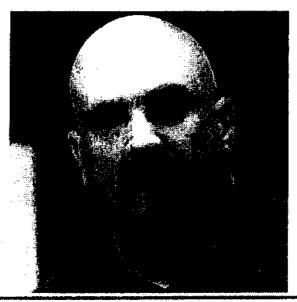
ktg

### Zero for Hero: Judge Snubs Man Hurt Stopping 'Butcher of Brighton Beach'

By Julia Marsh July 26, 2013 | 4:00am

http://www.nypost.com/2013/07/26/zero-for-hero-judge-snubs-man-hurt-stopping-butcher-of-brighton-

beach/





NYPD SCREW Joseph Lozito (above) sued the NYPD for not helping him when he fought killer Maksim Gelman

He's a bona-fide hero who stopped the so-called "Butcher of Brighton Beach" at the end of a 28-hour city killing spree — but a Manhattan judge yesterday said a father of two is entitled to zero from the city for his injuries in the harrowing 2011 subway encounter.

Joseph Lozito sued the NYPD in January 2012, claiming police officers did nothing to help him as he confronted violent madman Maksim Gelman on a packed No. 3 train.

But Judge Margaret Chan tossed the case yesterday, saying that while she lauded Lozito's bravery, cops did not have a specific charge of saving him from Gelman.

Because "no direct promises of protection were made to Mr. Lozito," the police had "no special duty" to protect him.

The psycho killer was sentenced to 200 years to life in prison for carving up Lozito with a knife and killing four other people in a drug-fueled spree.

Chan added, "The dismissal of this lawsuit does not lessen Mr. Lozito's bravery or the pain of his injuries. It merely provides a resolution to this litigation."

Lozito, 42, a martial-arts enthusiast, claimed cops hid in the motorman's cab while he disarmed Gelman as the madman slashed at his face, hands, neck and head.

"Mr. Lozito heroically maneuvered the knife away from Gelman and subdued him on the subway floor," Chan wrote in the Manhattan Supreme Court decision.



Makeim Gelman

ANNEO	CN	148/2516	

### SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT:	Hon. Margaret A. Chan  Justice		PART 52 INDEX 1010	88/12
JOSEPH LO	ZITO and ANDREA LOZITO, Plaintiffs,		MOTION DAYE MOTION SEQ. 8	<u>4/22/13</u> NO. <u>002</u>
	- Va			
	OF NEW YORK, THE NEW PARTMENT, and NEW YOR, Defendants.		<b>D</b>	
Movina Paners.	************************************	JUL 25 2013	5	is numbered I
Opposition Pap	ere	NEW YORK	<b>3FFICE</b> 2	- ! -
rapty rapers	*************************************	*********************		3

Defendant City of New York (the City) moved to dismiss this action and plaintiffs submitted opposition pro se, although they had an attorney of record. The City served its reply papers on the attorney of record. The motion was held in abeyance until the plaintiffs and their counsel submitted a Consent to Withdraw as Attorney dated April 10, 2013. The City has since provided its reply papers to the Lozitos. Plaintiffs also mailed an unsolicited letter to this Court dated April 23, 2013. The letter was not considered by the court as the motion was fully submitted. The decision on this motion to dismiss is as follows:

This is an action to recover for personal injures sustained by Mr. Lozito and a derivative action by Ms. Lozito. Mr. Lozito was brutally attacked by a wanted fugitive while he was abourd an uptown bound number 3 train in the County, City and State of New York on February 12, 2011 at approximately 8:45 a.m. The then fugitive and now convicted felon with a 225 year sentence, Maksim Gelman (Gelman), boarded the train after murdering four (4) people and assaulting several others within a short twenty-eight (28) hour time span. During his last burst of terror, Gelman was inside the front-most subway car on the number 3 train at the same time as Mr. Lozito and two (2) New York City Police Officers, P.O. Terrance Howell and P.O. Tamara Taylor. The officers were notified of reports that Gelman was on foot in the subway tunnels between 34th Street and 42th Street, In pursuit of Gelman, the officers boarded the first car and proceeded to enter the motorman's booth at the front end of the subway car. The subway car slowly proceeded into the tunnel between 34th Street and 42<sup>nd</sup> Street and came to a stop between stations. At this point, Mr. Lozito had no interaction with the police officers nor Gelman. Gelman, who was in fact on board the same subway car, approached the closed motorman's booth and claimed that he was a police officer. Denied from entering, Gelman turned around and walked towards Mr. Lozito. Another passenger approached the motorman's booth and excitedly motioned for the officers to come out. Gelman randomly confronted Mr. Lozito without provocation.

			NON-FINAL DISPOSITION
Check if appr	ropriate:	DO NOT POS	T REFERENCE

By plaintiffs' account, Gelman stood before him and proclaimed "you're gonna die, you're gonna die." (Dest Mot, Exh E, p 17). Then Gelman lunged at Mr. Lozito with an eight (8) inch knife cutting and stabbing him on the face, hands, neck, and head (see id at 17-19). Mr. Lozito heroically maneuvered the knife away from Gelman and subdued him on the subway floor. The officers lest the motorman's booth and restrained Gelman in handcuffs. Mr. Lozito claimed the police officers did not emerge from the motorman's booth to apprehend Gelman until the attack on him was underway.

Officer Howell's recollection of the events described how he observed something made of metal in Gelman's hands when Gelman approached the motorman's booth (see Deft Mot, Exh F, p 2). Officer Howell yelled "gun" and took cover in the motorman's booth (see id.). Officer Howell ordered Gelman to drop his weapon, an order that was ignored, and he proceeded to "physically remove and recover the knife from [Gelman's] hand." (id. at 2, para 9). Officer Howell placed Gelman in handcuffs.

The crux of Mr. Lozito's claim lies in the seconds that it took the police officers to intervene and eventually apprehend Gelman. Plaintiffs claimed that the officers negligently secured their own safety in the motorman's booth while observing the attack on Mr. Lozito. Plaintiffs also claimed the police officers were negligent in failing to recognize Gelman when they boarded the train and in failing to heed the warnings made by another passenger (see Deft Mot, Exh B, para 18).

The attack on Mr. Lozito was shocking and horrific, as was every confrontation that Gelman had during his twenty-eight (28) hour crime spree. The crimes against Mr. Lozito were made even more compelling by his own narrative provided in his opposition. Mr. Lozito's pro se opposition papers are thoughtful, eloquently written, and demonstrated his zest and love of life which propelled him to survive the attack by Gelman and defend himself. Mr. Lozito described in dramatic detail the blows and defensive maneuvers he used to disarm and take down Gelman. His statements ring true and appear highly credible.

However, it is well settled that absent a special relationship, discretionary governmental functions such as the provision of police protection are immune from tort liability (see Valdez v City of New York, 18 NY3d 69 [2011]; Cuffy v City of New York, 69 NY2d 255 [1987]; Kircher v City of Jamestown, 74 NY2d 251 [1989] Yearwood v Town of Brighton, 64 NY2d 667 [1984]). Despite even very sympathetic facts, public policy demands that a damaged plaintiff be able to identify the duty owed specifically to him or her, not a general duty to society at large (see Lauer v City of New York, 95 NY2d 95 [2000]; Johnson v Jamaica Hosp., 62 NY2d 523, 527 [1984]; Palsgraf v Long Is. R.R. Co., 248 NY 339 [1928]). "This is especially so where an individual seeks recovery out of the public purse." (see Lauer v City of New York, 95 NY2d at 100). The law is abundantly clear that no liability flows from negligence in the performance of a police function unless there is a special relationship (see Yearwood v Town of Brighton, 64 NY2d 667). Even giving Mr. Lozito every favorable inference (see Derdiarian v Felix Contr. Corp., 51 NY2d 308 [1987]), this court nonetheless is bound to grant the defendants' motion to dismiss; plaintiffs have failed to allege a prima facte case of negligence as these facts do not establish a special relationship.

The criteria for establishing a special relationship were set forth by the Court of Appeals in Cuffy v City of New York, 69 NY2d 255. "The elements of this 'special relationship' are: (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking" (Id. at 260). While plaintiffs pointed to the officers' close proximity to the attack and their perceived ability to prevent it, proximity does not create a special relationship (see id.). Mr. Lozito conceded that he had no communication or contact with the police officers before the attack took place. The first prong of the Cuffy elements was not met here. No direct promises of protection were made to Mr. Lozito nor were there direct actions taken to protect Mr. Lozito prior to the attack. Therefore, a special duty did not exist.

Ultimately, this case must be dismissed as a matter of law (see ld; Valdez v City of New York, 18 NY3d 69; Blackstock v Board of Educ. of the City of New York, 84 AD3d 524 [1st Dept 2011]). The dismissal of this lawsuit does not lessen Mr. Lozito's bravery or the pain of his injuries. It merely provides a resolution to this litigation.

Accordingly, the defendant's motion is granted and the complaint is dismissed.

Dated: July 18, 2013

Margaret A. Chan , J.S.C.

MARGARET A. CHAN

J.S.G.

JUL 25 2013

COUNTY CLERGS OFFICE

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Declined to Extend by Gallashaw v. City of Philadelphia, E.D.Pa., March

9, 2011

444 A.2d 1
District of Columbia Court of Appeals.

Carolyn WARREN, et al., Appellants,

ν.

DISTRICT OF COLUMBIA, et al., Appellees. Wilfred NICHOL, Appellant,

v.

DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, et al., Appellees.

Nos. 79-6, 79-394. | Argued En Banc April 13, 1981. | Decided Dec. 21, 1981.

Suits against District of Columbia and individual members of metropolitan police department for negligent failure to provide adequate police services were dismissed by the Superior Court, Joseph M. Hannon and William C. Pryor, JJ., and plaintiffs appealed. The Court of Appeals, Nebeker, J., held that: (1) fact that police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing apon victims therein, or for leaving premises without so ascertaining, and (2) where unknown occupants in vehicle which rear-ended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability.

#### Affirmed.

Kelly, J., filed opinion concurring in part and dissenting in part in which Mack, J., joined.

Newman, C. J., filed statement concurring in part and dissenting in part.

#### West Headnotes (3)

### [1] District of Columbia

- Officers, Agents, and Employees

132 District of Columbia

132k7 Officers, Agents, and Employees

Government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen, but, rather, duty to provide public services is owed to public at large, and, absent special relationship between police and individual, no specific legal duty exists.

61 Cases that cite this headnote

### [2] District of Columbia

- Officers, Agents, and Employees

132 District of Columbia

132k7 Officers, Agents, and Employees

That police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing upon victims therein, or for leaving premises without so ascertaining.

28 Cases that cite this headnote

### [3] District of Columbia

- Officers, Agents, and Employees

132 District of Columbia

132k7 Officers, Agents, and Employees

Where unknown occupants in vehicle which rearended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability. 28 Cases that cite this headnote

#### Attorneys and Law Firms

\*1 Stephen A. Friedman, Washington, D. C., for appellants.

Charles L. Reischel, Deputy Corp. Counsel, with whom Judith W. Rogers, Corp. Counsel, and David P. Sutton, Asst. Corp. Counsel, Washington, D. C., were on the petition, for appellees.

Before NEWMAN, Chief Judge, and KELLY, KERN, NEBEKER, HARRIS, MACK and FERREN, Associate Judges.

#### Opinion

### NEBEKER, Associate Judge:

Appellants Carolyn Warren, Miriam Douglas, and Joan Taliaferro in No. 79-6, and appellant Wilfred Nichol in No. 79-394 sued the District of Columbia and Individual members of the Metropolitan Police Department for negligent failure to provide adequate police services. The respective trial judges held that the police were under no specific legal duty to provide protection to the individual appellants and dismissed the complaints for failure to state a claim upon which relief could be granted. Super.Ct.Civ.R. 12(b)(6). However, in a split decision a three-judge division of this court determined that appellants Warren, Taliaferro and Nichol were owed a special duty of care by the police department and reversed the trial court rulings. The division unanimously concluded that appellant Douglas failed to fit within the class of persons to whom a special duty was owed, and affirmed the lower court's dismissal of her complaint. The court en banc, on petitions for rehearing, vacated the panel's decision. After rearguments, notwithstanding our sympathy for appellants who were the tragic victims of despicable criminal acts, we affirm the judgments of dismissal.

### Appeal No. 79-6

In the early morning hours of March 16, 1975, appellants Carolyn Warren, Joan Taliaferro, and Miriam Douglas were asleep in their rooming house at 1112 Lamont Street, N.W. Warren and Taliaferro shared a room on the third floor of the house; Douglas shared a room on the second floor with her four-year-old daughter. The women were awakened by the

sound of the back door being broken down by two men later identified as Marvin Kent and James Morse. The men entered Douglas' second floor room, where Kent forced Douglas to sodomize him and Morse raped her.

Warren and Taliaferro heard Dougias' screams from the floor below. Warren telephoned the police, told the officer on duty that the house was being burglarized, and requested immediate assistance. The department employee told her to remain quiet and assured her that police assistance would be dispatched promptly. Warren's call was received at Metropolitan Police Department Headquarters at 6:23 a. m., and was recorded as a burglary in progress. At 6:26 a. m., a call was dispatched to officers on the street as a "Code 2" assignment, although calls of a crime in progress should be given priority and designated as "Code 1." Four police cruisers responded to the broadcast; three to the Lamont Street address and one to another address to investigate a possible suspect.

Meanwhile, Warren and Taliaferro crawled from their window onto an adjoining roof and waited for the police to arrive. While there, they saw one policeman drive through the alley behind their house and proceed to the front of the residence without stopping, leaning out the window, or getting out of the car to check the back entrance of the house. A second officer apparently knocked on the door in front of the residence, but left when he received no answer. The three officers departed the scene at 6:33 a. m., five minutes after they arrived.

Warren and Taliaferro crawled back inside their room. They again heard Douglas' continuing screams; again called the police; told the officer that the intruders had entered the home, and requested immediate assistance. Once again, a police officer assured them that help was on the way. This second call was received at 6:42 a. m. and recorded merely as "investigate the trouble"-it was never dispatched to any police officers.

Believing the police might be in the house, Warren and Taliaferro called down to Douglas, thereby alerting Kent to their presence. Kent and Morse then forced all three women, at knifepoint, to accompany them to Kent's apartment. For the next fourteen hours the women were held captive, raped, robbed, beaten, forced to commit sexual acts upon each other, and made to submit to the sexual demands of Kent and Morse.

Appellants' claims of negligence included: the dispatcher's failure to forward the 6:23 a.m. call with the proper degree of urgency; \*3 the responding officers' failure to follow standard police investigative procedures, specifically their failure to check the rear entrance and position themselves properly near the doors and windows to ascertain whether there was any activity inside; and the dispatcher's failure to dispatch the 6:42 a.m. call.

### Appeal No. 79-394

On April 30, 1978, at approximately 11:30 p. m., appellant Nichol stopped his car for a red light at the intersection of Missouri Avenue and Sixteenth Street, N.W. Unknown occupants in a vehicle directly behind appellant struck his car in the rear several times, and then proceeded to beat appellant about the face and head breaking his jaw.

A Metropolitan Police Department officer arrived at the scene. In response to the officer's direction, appellant's companion ceased any further efforts to obtain identification information of the assailants. When the officer then failed to get the information, leaving Nichol unable to institute legal action against his assailants, Nichol brought a negligence action against the officer, the Metropolitan Police Department and the District of Columbia.

[1] [2] The trial judges correctly dismissed both complaints. In a carefully reasoned Memorandum Opinion, Judge Hannon based his decision in No. 79-6 on "the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen." See p. 4, infra. The duty to provide public services is owed to the public at large, and, absent a special relationship between the police and an individual, no specific legal duty exists. Holding that no special relationship existed between the police and appellants in No. 79-6, Judge Hannon concluded that no specific legal duty existed. We hold that Judge Hannon was correct and adopt the relevant portions of his opinion. Those portions appear in the following Appendix.

[3] Judge Pryor, then of the trial court, ruled likewise in No. 79-394 on the basis of Judge Hannon's opinion. In No. 79-394, a police officer directed Nichol's companion to cease efforts to identify the assailants and thus to break off the violent confrontation. The officer's duty to get that identification was one directly related to his official and general duty to investigate the offenses. His actions and

failings were solely related to his duty to the public generally and possessed no additional element necessary to create an overriding special relationship and duty.<sup>2</sup>

Here the effort to separate the hostile assailants from the victims-a necessary part of the on-scene responsibility of the police-adds nothing to the general duty owed the public and fails to create a relationship which imposes a special legal duty such as that created when there is a course of conduct, special knowledge of possible harm, or the actual use of individuals in the investigation, See Falco v. City of New York, 34 A.D.2d 673, 310 N.Y.S.2d 524 (App.Div.1970), aff'd, 29 N.Y.2d 918, 329 N.Y.S.2d 97, 279 N.E.2d 854 (1972) (police officer's \*4 statement to injured motorcyclist that he would obtain name of motorist who struck the motorcycle was a gratuitous promise and did not create a special legal duty); Jackson v. Heyman, 126 N.J.Super. 281, 314 A.2d 82 (Super, Ct. Law Div. 1973) (police officers' investigation of vehicle accident where pedestrian was a minor child did not create a special legal duty to child's parents who were unsuccessful in their attempt to recover damages because police failed to identify drivers of vehicle). We hold that Judge Pryor did not err in dismissing No. 79-394 for failure to state a claim.

In either case, it is easy to condemn the failings of the police. However, the desire for condemnation cannot satisfy the need for a special relationship out of which a duty to specific persons arises. In neither of these cases has a relationship been alleged beyond that found in general police responses to crimes. Civil liability fails as a matter of law.

#### APPENDIX

### SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

Civil Action No. 4695-76

CAROLYN WARREN, et al., Plaintiffs,

٧,

DISTRICT OF COLUMBIA, et al., Defendants.

### MEMORANDUM OPINION

The Court, however, does not agree that defendants owed a specific legal duty to plaintiffs with respect to the allegations made in the amended complaint for the reason that the District of Columbia appears to follow the well-established rule that official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection. Compare Rieser v. District of Columbia, 183 U.S.App.D.C. 375, 390-91, 563 F.2d 462, 477-78 (1977) (rehearing en banc granted and panel opinion vacated on other grounds; panel opinion reinstated in pertinent part, 188 U.S.App.D.C. 384, 580 F.2d 641 (647) (1978)); Westminster Investing Corp. v. G. C. Murphy Co., 140 U.S.App.D.C. 247, 259-50, 434 F.2d 521, 523-24 (1970) and Yohanan v. Wells, No. 78-0671 (D.D.C. June 28, 1978), with Massengill v. Yuma County, 104 Ariz. 518, 456 P.2d 376 (1969) (en banc ); Riss v. City of New York, 22 N.Y.2d 579, 293 N.Y.S.2d 897, 240 N.E.2d 860 (1968); Annot., 46 A.L.R.3d 1084 (1972) and Annot., 41 A.L.R.3d 700 (1972). This uniformly accepted rule rests upon the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen. Turner v. United States, 248 U.S. 354, 357-58, 39 S.Ct. 109, 110, 63 L.Ed. 291 (1919); Rieser v. District of Columbia, supra.

A publicly maintained police force constitutes a basic governmental service provided to benefit the community at large by promoting public peace, safety and good order. The extent and quality of police protection afforded to the community necessarily depends upon the availability of public resources and upon legislative or administrative determinations concerning allocation of those resources. Riss v. City of New York, supra. The public, through its representative officials, recruits, trains, maintains and disciplines its police force and determines the manner in which personnel are deployed. At any given time, publicly furnished police protection may accrue to the personal benefit of individual citizens, but at all times the needs and interests of the community at large predominate. Private resources and needs have little direct effect upon the nature of police services provided to the public. Accordingly, courts have without exception concluded that when a municipality or other governmental entity undertakes to furnish police services, it assumes a duty only to the public at large and not to individual members of the community. E.g., Trautman v. City of Stamford, 32 Conn.Supp. 258, 350 A.2d 782 (1975); \*5 Henderson v. City of St. Petersburg, 247 So.2d 23 (Fla.Dist.Ct.App.1971); Massengill v. Yuma County, supra, and Riss v. City of New York, supra. Dereliction in the performance of police duties may, therefore, be redressed only in the context of a public prosecution and not in a private suit for money damages. Massengill, supra.

This rule of duty owed to the public at large has been most frequently applied in cases involving complaints of inadequate protection during urban riots or mob violence. Many of these cases challenge the preparedness of the police to handle such situations, while others, such as Westminster Investing Corp. v. G. C. Murphy Co., supra, challenge the tactical decisions made to curtail or remove police protection from the riot areas. In Westminster, officials of the Metropolitan Police Department of the District of Columbia had decided to limit police presence in the area of the Murphy Company's store during the firey 1968 riots. Murphy's store was destroyed and the company filed a claim against the District of Columbia contending that the police department had deliberately or negligently abandoned its policing obligations during the riots and thereby permitted rioters to destroy Murphy's property. In affirming the dismissal of Murphy's claim against the District, the United States Court of Appeals for the District of Columbia Circuit held that the District of Columbia had no direct legal obligation to Murphy and that Murphy, therefore, had "no substantive right to recover the damages resulting from failure of (the) government or its officers to keep the peace." Id. at 252, 434 F.2d at 526, quoting Turner v. United States, supra (248 U.S.) at 358 (39 S.Ct. at 110).

Courts have also found no private duty and no liability in an assortment of other situations which involved allegedly inadequate police protection. In Henderson v. City of St. Petersburg, supra, plaintiff had contacted the St. Petersburg police department and made arrangements for specific police protection white making deliveries in a dark and secluded part of the city. Plaintiff had been previously attacked white making such deliveries and, accordingly, relied upon the assurances of police personnel that officers would be on the scene. Following carefully the instructions given him by the police, plaintiff was, nonetheless, shot by assailants. The order dismissing plaintiff's complaint against the city was affirmed on the grounds that, in the absence of a special relationship, not present in the case, the police department was under no duty to protect plaintiff Henderson.

It was in Massengill v. Yuma County, supra, that the Arizona Supreme Court, in a unanimous en banc decision, affirmed the dismissal of a complaint alleging that a deputy sheriff and the county employing him were negligent in failing to apprehend two reckless drivers. According to the complaint, the deputy sheriff saw two youths leave a local tavern and drive their cars away at excessive speeds. The deputy sheriff then allegedly followed the two cars, watching them weave back and forth, drive on the wrong side of the road and attempt to pass on a hill. The officer made no attempt to apprehend the drivers or prevent their reckless conduct. Shortly thereafter the two reckless drivers collided with an oncoming vehicle causing the deaths of five of the six persons involved. The Arizona Superior Court had concluded that the duty of defendants to arrest the reckless drivers was a duty owed to the general public and not to the deceased occupants of the oncoming vehicle. The Arizona Supreme Court agreed. Accord, Trautman v. City of Stamford, supra. (Footnote 1 omitted.)

The general duty owed to the public may become a specific duty owed to an individual if the police and the individual are in a special relationship different from that existing between the police and citizens generally. Thus, when the New York police department solicited confidential information to aid in apprehension of gangster Willie Sutton, the police assumed a special duty to the informant who came forward. Schuster v. City of New York, 5 N.Y.2d 75, 180 N.Y.S.2d 265, 154 N.E.2d 534 (1958). Similarly, a special relationship was created when the police arranged a confrontation between a suspect and a witness to a crime, \*6 thereby giving the suspect an opportunity to assault the witness. Gardner v. Village of Chicago Ridge, 71 III.App.2d 373, 219 N.E.2d 147 (1966), In McCorkle v. City of Los Angeles, 70 Cal.2d 252, 74 Cal.Rptr. 389, 449 P.2d 453 (1969), a police officer investigating a traffic accident led plaintiff into the middle of the highway where plaintiff was then struck by another car. The California Court found that a special duty had been created by the officer's affirmative conduct. Likewise, a parole officer was held to have been in a special relationship with individuals operating a foster home and, therefore, under an obligation to disclose the violent character of a juvenile whom he sought to place in the foster home. Johnson v. State, 69 Cal.2d 782, 73 Cal.Rptr. 240, 447 P.2d 352 (1968).2 The United States Court of Appeals for the District of Columbia recognized a similar special relationship between a government mental hospital and the family of a violent, assaultive patient who the hospital planned to discharge and who the hospital knew had previously attacked family

members. Hicks v. United States, 167 U.S.App.D.C. 169, 511 P.2d 407 (1975).

Plaintiffs in this action contend that they, too, entered a special relationship with the police when Warren and Taliaferro telephoned to request assistance. Courts which have had the opportunity to consider comparable situations have concluded that a request for aid is not in itself sufficient to create a special duty. In Riss v. City of New York, supra, the plaintiff had complained to the police numerous times about a rejected suitor who had threatened her repeatedly. In response to plaintiff's desperate pleas for help, the police rendered only nominal assistance and refused to help plaintiff further. Plaintiff received a "last chance" threat from the suitor and once more called the police without success. The following day, the suitor carried out his threat by "having a hired thug throw lye in (plaintiff's) face," Id. at 584, 293 N.Y.S.2d at 900, 240 N.E.2d at 862. Distinguishing Schuster v. City of New York, supra, the Court held that plaintiff's pleas for help did not create a special relationship between herself and the police and could not serve as the basis of liability.

The plaintiff in Antique Arts Corporation v. City of Torrance, 39 Cal.App.3d 588, 114 Cal.Rptr. 332 (1974), arranged to have its burglar alarm directly wired to the Torrance police station. Plaintiff contended that the alarm went off during the course of a burglary but the police dispatcher negligently delayed ten minutes before transmitting the alert, thereby allowing the burglars to escape with plaintiff's goods. Plaintiff argued that the alarm hookup created a special relationship with the police, but the Court rejected this contention, concluding that "an alert from an alarm, irrespective of how transmitted, is no more than a complaint that a crime has been or is being committed." Id. at 592, 114 Cal.Rptr. at 334.

As noted above, the Florida Appeals Court dismissed the complaint in Henderson v. City of St. Petersburg, supra, notwithstanding plaintiff's having requested and specifically discussed plans for police protection. After reviewing cases in which the police or other government agency were under a 'special duty' different from that owed to the public generally, the Florida Court concluded that a request for police protection, even when accompanied by a promise that protection would be provided, does not create the "special duty" necessary to establish tort liability. Id. at 25.

Plaintiffs have adopted a more novel theory in an attempt to distinguish this case from those discussed above. Plaintiffs contend \*7 that although the Metropolitan Police Department may not have been under a specific duty to these plaintiffs at the time of the initial telephone complaint, the police undertook an obligation by taking some action toward rendering assistance. Plaintiffs seem to be saying that no liability would have attached had the police operator refused plaintiffs' call, had the dispatcher refused to transmit the message, or had the officers refused to respond. However, plaintiffs' argument continues, once the operator, dispatcher and officers took some action to assist plaintiffs, they all became personally answerable in money damages for failing to render assistance adequate to meet plaintiffs' needs. Without any supporting authority, plaintiffs contend that defendant police employees were "at least" in the position of volunteers and must be held liable as volunteers for any damages resulting from their negligent omissions. Plaintiffs' argument misapprehends both the legal status of the police officer and the legal status of the volunteer.

In the classic case, H. R. Moch Co., Inc. v. Rensselaer Water Co., 247 N.Y. 160, 159 N.E. 896 (1928), then Judge Cardozo delineated the liability of a volunteer:

It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all .... The hand once set to a task may not always be withdrawn with impunity though liability would fail if it had never been applied at all.... If conduct has gone forward to such a stage that inaction would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward. (Id. at 167, 159 N.E. at 898.)

The Moch case involved a suit against a water company for failure to supply adequate water to fight a city fire. Judge Cardozo found that the failure to provide adequate water to fight the fire constituted, at most, a nonactionable withholding of a benefit. Whatever the omissions and failures of the defendant police officers in this action, those alleged omissions and failures, too, constituted no more than a similar withholding of a benefit.

Moreover, volunteer liability is premised in large part upon the assumption that the volunteer is free to assess each rescue situation, weigh the risks involved, and determine whether to shoulder the obligation or leave it to someone else. <sup>3</sup> Police officers clearly are not in a position to make such choices on a case by case basis and it would be absurd to presume that an individual assumes a permanent "volunteer" status when he becomes a police officer. Again, in the words of Judge Cardozo:

An intention to assume an obligation of indefinite extension to every member of the public is seen to be the more improbable when we recall the crushing burden that the obligation would impose.... A promisor will not be deemed to have had in mind the assumption of a risk so overwhelming for any trivial reward. (Id. at 165-166, 159 N.E. at 897-98.)

Plaintiffs have also construed the issues in this case as giving rise to "negligent performance of police duties." In an attempt to avoid the overwhelming case law barring private suits over negligent omissions in the performance of police duties, plaintiffs seek to bring this action within the orbit of cases allowing recovery for injuries caused by negligent acts of police officers in the performance of their official duties. The cases cited by plaintiffs include the negligent handling of a police dog, negligent operation of a police vehicle, and the negligent use of a police weapon. Such cases involve acts of affirmative negligence, for which anyone-police or civilian-would be liable: negligent handling of an attack dog, negligent operation of a motor vehicle, and negligent use of a firearm. Those acts \*8 of ordinary negligence do not change in character because they happen to have been committed by a police officer in the course of his duties. However, the allegations of negligence in the present case derive solely from defendants' status as police employees and from plaintiffs' contention that defendants failed to do what reasonably prudent police employees would have done in similar circumstances. The difference is between ordinary negligence on the one hand and a novel sort of professional maloractice on the other. A person does not, by becoming a police officer, insulate himself from any of the basic duties which everyone owes to other people, but neither does he assume any greater obligation to others individually. The only additional duty undertaken by accepting employment as a police officer is the duty owed to the public at large.

The public duty concept has drawn some criticism for purportedly creating the rule that: "Because we owe a duty to everybody, we owe it to nobody." Riss v. City of New York, supra at 585, 293 N.Y.S.2d at 901, 240 N.E.2d at 862 (Keating, J., dissenting). A duty owed to the public, however, is no less enforceable because it is owed to "everybody."

Warren v. District of Columbia, 444 A.2d 1 (1981)

Public officials at all levels remain accountable to the public and the public maintains elaborate mechanisms to enforce its rights-both formally in the courts and less formally through internal disciplinary proceedings. In the case of the Metropolitan Police Department, officers are subject to criminal charges and a penalty of two years imprisonment for failure to arrest law breakers. D.C.Code 1973, s 4-143. Additionally, officers are answerable to their superiors and ultimately to the public through its representatives, for dereliction in their assigned duties. D.C.Code 1973, s 4-121.

The absence of a duty specifically enforceable by individual members of the community is not peculiar to public police services. Our representative form of government is replete with duties owed to everyone in their capacity as citizens but not enforceable by anyone in his capacity as an individual. Through its representatives, the public creates community service; through its representatives, the public establishes the standards which it demands of its employees in carrying out those services and through its representatives, the public can most effectively enforce adherence to those standards of competence. As members of the general public, individuals forego any direct control over the conduct of public employees in the same manner that such individuals avoid any direct responsibility for compensating public employees.

Plaintiffs in this action would have the Court and a jury of twelve additional community representatives join in the responsibility of judging the adequacy of a public employee's performance in office. Plaintiffs' proposition would lead to results which the Massengill Court aptly described as "staggering." Massengill v. Yuma County, supra at 523, 456 P.2d at 381. In this case plaintiffs ask the Court and jury to arrogate to themselves the power to determine, for example, whether defendant Officer Thompson acted in a manner consistent with good police practice when he volunteered to stake out a suspect's house rather than volunteering to report to the crime scene. Consistent with this contention then, should a Court and jury also undertake to sift through clues known to the police in order to determine whether a criminal could reasonably have been apprehended before committing a second crime? Should a Court also be empowered to evaluate, in the context of a tort action, the handling of a major fire and determine whether the hoses were properly placed and the firemen correctly allocated? Might a Court also properly entertain a tort claim over a school teacher's ability to teach seventh grade English or over a postman's failure to deliver promptly an important piece of mail?

Establishment by the Court of a new, privately enforceable duty to use reasonable diligence in the performance of public functions would not likely improve services rendered to the public. The creation of direct, personal accountability between each government employee and every member of the community would effectively bring the \*9 business of government to a speedy halt, "would dampen the ardor of all but the most resolute, or the most irresponsible in the unflinching discharge of their duties,"4 and dispatch a new generation of litigants to the courthouse over grievances real and imagined. An enormous amount of public time and money would be consumed in litigation of private claims rather than in bettering the inadequate service which draws the complaints. Unable to pass the risk of litigation costs on to their "clients," prudent public employees would choose to leave public service.

Although recognizing the obligation of public employees to perform their duties fully and adequately, the law properly does not permit that obligation to be enforced in a private suit for money damages. Accordingly, the Court concludes that plaintiffs have failed to state claims upon which relief may be granted and accordingly, the action is dismissed as to all defendants. (Footnote 5 omitted.)

JOSEPH M. HANNON

Judge

Dated: November 21, 1978

KELLY, Associate Judge, with whom MACK, Associate Judge, joins, concurring in part and dissenting in part:

The basic premise underlying the dismissals of these complaints is correct: unless a "special duty" to a particular individual can be shown, public officials and governmental units owe only a general, nonactionable duty to members of the public to provide services such as fire and police protection. Chandler v. District of Columbia, D.C.App., 404 A.2d 964 (1979); Duran v. City of Tucson, 20 Ariz.App. 22, 509 P.2d 1059 (1973); Trautman v. City of Stamford, 32 Conn.Supp. 258, 350 A.2d 782 (1975); Trujillo v. City of Albuquerque, 93 N.M. 564, 603 P.2d 303 (App.1979); 18 E. McQuillan, Municipal Corporations ss 53.04a, b (3d ed. 1977). As stated in 2 T. Colley, Law of Torts:

The rule of official responsibility, then, appears to be this: That if the duty which the official authority imposes upon an officer is a duty to the public, a failure to perform it, or an inadequate or erroneous performance, must be a public, not an individual injury, and must be redressed, if at all, in some form of public prosecution. On the other hand, if the duty is a duty to the individual, then a neglect to perform it, or to perform it properly, is an individual wrong, and may support an individual action for damages. "The failure of a public officer to perform a public duty can constitute an individual wrong only when some person can show that in the public duty was involved also a duty to himself as an individual, and that he has suffered a special and peculiar injury by reason of its nonperformance." (Id. s 300, at 385-86 (4th ed. 1932); citation and footnotes omitted.)

This general duty/special duty dichotomy is illustrated by our decision in Chandler v. District of Columbia, supra. There, the District of Columbia, for financial reasons, decided to close several randomly chosen fire stations, one of which was near Mrs. Chandler's home. After a fire broke out in her home and her two children died from smoke inhalation, Mrs. Chandler sued for wrongful death, alleging that her children's deaths resulted from the District's negligence in closing the fire station. Recognizing the general rule of municipal nonliability, this court found that the facts of Mrs. Chandler's case did not give rise to a special duty or "special relationship." Id. at 966-67. By way of further analysis, fire protection services are meant to benefit the community as a whole, and because Mrs. Chandler's children were members of the general public, with nothing to single them out as specific individuals to whom a duty was owed, no special duty had arisen. Without the critical element of duty, an action in negligence does not lie. 1

\*10 The same reasoning applies in police protection cases. For example, in Trautman v. City of Stamford, supra, a plaintiff who was struck by a car while standing on a public sidewalk sued the city and two police officers, alleging a negligent failure to stop drag racing on the street adjacent to the sidewalk. In finding that no special duty was owed the plaintiff, the court stated, "the allegations of the instant case nowhere assert any conduct directed specifically by the defendant police officers toward the plaintiff individually. The conduct of the defendant patrolmen is directed ... toward the general public of which the plaintiff happened to be a part at the time in question." Id. 32 Conn.Supp. at 259, 350 A,2d at 783. The same rule has been applied in finding no special duty to protect a young man from violence in a city park, Trujillo v. City of Albuquerque, supra; to warn a motel employee of suspicious persons in the motel parking lot, Sapp v. City of Tallahassee, 348 So.2d 363 (Fla.Dist.Ct.App.1977); to arrest a drunk driver whose car collided with the plaintiff's decedent's car, Massengill v. Yuma County, 104 Ariz. 518, 456 P.2d 376 (1969); to protect a young lady from the threats of her estranged boyfriend, Riss v. City of New York, 22 N.Y.2d 579, 293 N.Y.S.2d 897, 240 N.E.2d 860 (1968); and to protect property during a civil disturbance, Westminster Investing Corp. v. G. C. Murphy Co., 140 U.S.App.D.C. 247, 434 F.2d 521 (1970).

The general, nonactionable duty to provide police services may narrow, however, to a special, actionable duty if two factors are present. First, there must be some form of privity between the police department and the victim that sets the victim apart from the general public. Sec, e.g., City of Tampa v. Davis, 226 So.2d 450, 454 (Fla.Dist.Ct.App.1969). That is, the victim must become a reasonably foreseeable plaintiff. Second, there must be specific assurances of protection that give rise to justifiable reliance by the victim. Sec, e.g., Sapp v. City of Tallahassee, supra at 365-66.

In Bloom v. City of New York, 78 Misc.2d 1077, 357 N.Y.S.2d 979 (1974), several store owners sued the city for negligent failure to protect their property during a civil disturbance in 1968. The complaints alleged that city officials gave specific assurances of police protection, but negligently failed to take steps to carry out the promises. The city moved to dismiss the complaint, relying on the general rule of municipal nonliability. The court denied the motion, easily distinguishing the case from those cases in which there is no special duty:

In the case at bar it is alleged that the plaintiffs were ready, willing and able to protect their premises but that they were restrained by the police who assured them that proper police protection would be provided. There is therefore alleged an affirmative series of acts by which the city assumed a special duty .... (Id. at 1078, 357 N.Y.S.2d at 981.)

See also Silverman v. City of Fort Wayne, 171 Ind.App. 415, 357 N.E.2d 285 (Ind.App. 1976) (dismissal of negligence complaint arising from failure to protect property during riot reversed in light of personal promise of protection). <sup>2</sup>

In Florence v. Goldberg, 44 N.Y.2d 189, 404 N.Y.S.2d 583, 375 N.E.2d 763 (1978), the police department voluntarily

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assigned a school crossing guard to cover a particularly busy intersection in Brooklyn. For the first two weeks of school, the infant plaintiff's mother accompanied him to school and saw a guard at the intersection every day. When the mother accepted employment, she sent the child to school by himself, relying on the guard's presence at the intersection. \*11 One day, the guard was ill and the police department failed to provide a replacement or to notify school officials that there would be no guard at the crossing. The child was struck by a taxi cab as he tried to cross the street alone; the mother sued the city in negligence. Upholding a jury verdict for the child, the court emphasized two factors distinguishing that case from general duty cases. First, the duty assumed by the police was a limited one; it was directed toward a specific class of individuals rather than toward the public in general. Id. at 196-97, 404 N.Y.S.2d at 587, 375 N.E.2d at 767. Second, the mother had witnessed the provision of services and had relied to her detriment on the guard's performance. Id. The combination of these two factors led the court to conclude that the general duty to provide police services had become a special duty owed to that child.3

As both the Bloom and Florence courts noted, the concept of special duty is actually no more than an application of the cardinal principal of tort law that, even where no duty to act may exist originally, once one undertakes to act, he has a duty to do so with due care. Florence v. Goldberg, supra at 196, 404 N.Y.S.2d at 587, 375 N.E.2d at 766; Bloom v. City of New York, supra at 1079, 357 N.Y.S.2d at 981. Cf. Security National Bank v. Lish, D.C.App., 311 A.2d 833, 834 (1973) ("(o)ne who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all.") (quoting Glanzer v. Shepard, 233 N.Y. 236, 239, 135 N.E. 275, 276 (1922)). More precisely, one who begins to perform a service to another, whether gratuitously or not must perform with reasonable care; thus, he subjects himself to liability for any harm suffered because the other reasonably and foreseeably relied upon the actor's performance. See W. Prosser, The Law of Torts s 56 (4th ed. 1972); 2 F. Harper and F. James, The Law of Torts s 18.6 (1956); 2 Restatement (Second) of Torts s 323 (1965). In the words of Chief Judge Cardozo:

> If conduct has gone forward to such a stage that inaction would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward. (Moch Co. v. Rensselaer Water

Co., 247 N.Y. 160, 167, 159 N.E. 896, 898 (1928); citation omitted.)

This is not, of course, a theory of strict liability; the actor need only do that which is reasonable under the circumstances. Prosser, supra.

To summarize, there are two prerequisites to a finding of a special duty. First, there must be direct contact or some other form of privity between the victim and the police department so that the victim becomes a reasonably foreseeable plaintiff. Second, there must be specific assurances of police services that create justifiable reliance by the victim. Without both of these elements, the duty to provide police services remains a general, nonactionable duty to the public at large.

П

In reviewing the trial courts' grants of the motions to dismiss, "we must accept every well-pleaded allegation of material fact ... as true and indulge all reasonable inferences which may arise therefrom." Early Settlers Insurance Co. v. Schweid, D.C.App., 221 A.2d 920, 922 (1966). The dismissals will be sustained only if it appears "beyond doubt that the plaintiff(s) can prove no set of facts in support of (their claims) which would entitle (them) to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957). See also Owens v. Tiber Island Condominium Association, D.C.App., 373 A.2d 890, 893 (1977).

\*12 Under this standard of review, I would hold that the complaints of appellants Warren, Taliaferro (No. 79-6), and Nichol (No. 79-394), contain facts that, if proved, are sufficient to establish that the Police Department owed each a special duty. Appellants Warren's and Taliaferro's urgent telephone calls to the Metropolitan Police Department removed them from the broad class of the general public. Appellant Nichol's direct contact with the officer on the scene of the assault made him a reasonably foreseeable plaintiff. Any duty assumed by the police from those points on was not a duty to the community as a whole, but a specific duty to identifiable persons.

All three of these appellants have also alleged specific assurances of police protection that may have created justifiable reliance on their parts. When a police department employee tells frantic callers that help is on the way, as in No.

79-6, or that he will obtain vital information for an injured person, as in No. 79-394, it is reasonably foreseeable that the persons so assured may forego, to their detriment, other avenues of help. Once the police embarked upon services under circumstances where it was reasonably foreseeable that a citizen might rely on their performance, they assumed a duty to perform with due care.

Appellant Douglas does not fit within the class of persons to whom a special duty was owed. Although she arguably meets the first prerequisite, 4 she does not fulfill the second. Because she was unaware of either the telephone calls to the police or the police's assurances to the other women, she could not have justifiably relied to her detriment on those assurances. Therefore, the dismissal as to her must be affirmed.

I do not ignore appellees' "floodgates of litigation" argument and have carefully considered the trial judge's fear that "(t)he creation of a direct, personal accountability between each government employee and every member of the community would effectively bring the business of government to a speedy halt... and dispatch a new generation of litigants to the courthouse over grievances real and imagined." The duty which I recognize in this opinion will not create such broad liability. Moreover, the argument

assumes that a strict liability standard is to be imposed and that the courts would prove completely unable to apply general principles of tort liability in a reasonable fashion in the context of actions arising from the negligent acts of police ... personnel. The argument is ... made as if there were no such legal principles as fault, proximate cause or foreseeability, all of which operate to keep liability within reasonable bounds. No one is contending that the police must be at the scene of every potential crime .... They need only act as a reasonable man would under the circumstances. (Riss v. City of New York, supra at 586, 293 N.Y.S.2d at 902, 240 N.E.2d at 863 (Keating, J., dissenting).)

In my judgment, the complaints of appellants Warren, Taliaferro and Nichol contain sufficient facts from which they may prove that a special duty was owed to them; consequently, the trial judges erred in dismissing their complaints for failure to state a claim upon which relief could be granted. To me, also, gratuitous comments about condemning the recognized "failings" of the police in these cases is no substitute for an independent and objective decisional analysis of an important and sensitive issue.

NEWMAN, Chief Judge, concurring in part and dissenting in part:

I concur in the majority opinion as to appellant Nichol (No. 79-394). I join the dissent as to appellants Warren, Douglas and Taliaferro (No. 79-6).

#### **Footnotes**

- Having based his dismissal on an absence of duty, Judge Hannon found it unnecessary to decide the adequacy of the notice to the District of Columbia under D.C.Code 1973, a 12-309. Consequently, we do not review that issue on appeal.
- lt can be seen from cases in which a special duty has been found that an additional element has been injected above the existing general public duty. E.g., Florence v. Goldberg, 44 N.Y.2d 189, 404 N.Y.S.2d 583, 375 N.E.2d 763 (1978) (school crossing guard course of conduct and police requiring replacement of absent guard together with rollance); McCorkle v. City of Los Angeles, 70 Cal.2d 252, 74 Cal.Rptr. 389, 449 P.2d 453 (1969) (en banc) (use of auto accident victim to aid police investigation by walking to point of impact in street); Johnson v. States, 69 Cal.2d 782, 73 Cal.Rptr. 240, 447 P.2d 352 (1968) (en banc) (placement of youth with known homicidal tendencies in foster home); Gardner v. Village of Chicago Ridge, 71 Ill.App.2d 373, 219 N.E.2d 147 (1966) (return of victim to scene for "show up" identification of still violent assault suspects); Schuster v. City of New York, 5 N.Y.2d 75, 180 N.Y.S.2d 265, 154 N.E.2d 534 (1958) (recruitment of citizen informant in national organized violent crime case).
- A similar factual situation is presented in Rieser v. District of Columbia, supra. This case involved a woman who was raped and murdered by a District of Columbia parolee who had been assisted by a parole officer in obtaining employment at the apartment complex where the murder took place. The decedent's father filed suit for damages under the District of Columbia Wrongful Death Act against the owners of the apartment complex, the parolee, the parole officer and the District of Columbia. The Court of Appeals, MacKinnon, Circuit Judge, held inter alia that an actionable duty exists where a special relationship has been established between the governmental unit and plaintiff.
- The District of Columbia Court of Appeals recently refrained from implying an adoption of the rescue doctrine in this jurisdiction.

  Gillespie v. Washington, D.C.App., 395 A.2d (18) 21 (1978). This Court's discussion of the rescue doctrine and its applicability to plaintiffs' claim should likewise not be considered an adoption of the doctrine.

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- 4 Gregoire v. Biddle, 177 F.2d 579, 581 (2d Cir. 1949).
- The Chandler case was also decided on the basis of sovereign immunity; because the decision to close the stations was a discretionary act, the city could not be sued. Id. at 966. See generally Wade v. District of Columbia, D.C.App., 319 A.2d B57 (1973) (en banc).

  As the Chandler court noted, the questions of sovereign immunity and duty require separate analysis. Chandler, supra at 966. No question of sovereign immunity is raised in these appeals.
- The allegations of specific assurances of protection in Bloom and Silverman distinguish those cases from Westminster Investing Corp. v. G. C. Murphy Co., supra, a case relied on by the trial judge in No. 79-6. The plaintiffs in Westminster were members of the general public, to whom no promises of protection had been made, and to whom the District therefore owed no special duty.
- Appellees attempt to distinguish Florence from the case at bar by arguing that the police in Florence breached a statutory duty to provide crossing guards. It is clear from the opinion, however, that the police department regulations referred to by appellees dealt only with the procedures to be followed if a school guard, once gratuitously assigned, was unable to report for duty. The initial assumption of the duty to provide a crossing guard was completely voluntary. Florence, supra 44 N.Y.2d at 196, 404 N.Y.S.2d at 587, 375 N.E.2d at 767.
- Whether she removed herself from the class of the general public is, as stated, a factual question: from the point of view of the police department, with its knowledge from the telephone call, was appellant Douglas a foreseeable victim or merely still a member of the general public?
- 5 See Appendix infra at 4.

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